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Outcasts from Justice

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outcasts from justice

by

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PREFACE

The manner in which the Internal Security Act may be used to impose restriction orders or banning orders upon individuals has been the subject of much debate and writing. Generally this matter has been approached either from the perspective of the politician, who has concentrated on the socio-political aspects, or from the perspective of the lawyer, who has examined the interpretation of the law by the courts. The present study seeks to combine both approaches. In her monograph Sarah Parry analyses the law, but at the same time she focuses attention upon the human consequences of this unjust system.

The present study was originally submitted as an essay for the course in Aspects of Public Law at the University of the Witwatersrand. This course, which concentrates on law in operation rather than library law, encourages students to see law in its social and political setting. Sarah Parry's study exemplifies this approach.

The Centre for Applied Legal Studies of the University of the Witwatersrand, which pursues research into law affecting the black community and civil rights, is committed to the study of South African law as it exists in practice. Members of its staff help to supervise student projects in Aspects of Public Law and the Centre seeks to publish the best essays in this course. In 1979 the Centre published The South African Press Council - a Critical Review by S Adelman, J Howard,

K Stuart and A van Eeden. This year the Centre is pleased to be able to publish Sarah Parry's study.

It is our earnest hope that South Africans will read the present study and consider whether a legal system which permits such inhumanity to man is compatible with our confessed allegiance to Western values.

JOHN DUGARD
HAROLD RUDOLPH
JOHAN VAN DER VYVER

22 May 1981

I. INTRODUCTION

Late 1980 and early 1981 have seen a spate of bannings under the Internal Security Act. Newspaper reports focus our attention on the Act and on the consequences of a banning order; protests are voiced on an international scale.[1] Our courts have also taken a fresh look at banning. S v Meer, a November 1980 decision of the Natal Provincial Division of the Supreme Court (1981 (1) SA 739 (N)) highlights the issue, stressing the harsh, but at the same time hopelessly vague, provisions of the Act.

Banning orders are very much a part of South African life in the 1980's. Hundreds of people, of all racial and income groups, have been forced to lead lives hampered by restrictions of varying severity. Today, a study of the subject is both relevant and topical.

1. THE INTERNAL SECURITY ACT 44 OF 1950

The Suppression of Communism Bill was tabled in Parliament in 1950. During the debate on the Second Reading of the Bill, the Minister of Justice, Mr C R Swart, stated that legislation such as the new Bill was necessary "to cope with the deadly menace of Communism in South Africa".[2] Over 30 years later that "deadly menace" is apparently still with us, as is the Suppression of Communism Act - although much amended, and with a new name, the Internal Security Act.

The Act may initially have been designed to combat Communism, but the definitions of "Communism" and "Communist" contained in s 1 extend far beyond what the man in the street might understand these terms to mean. So, Communism includes "any doctrine or scheme ... which aims at bringing about any

political, industrial, social or economic change within the Republic by the promotion of disturbance or disorder ..."(s 1). As Dowling AJP said in Minister of Justice v Hodgson 1963 (4) SA 535 (AD) at 538 , the Act creates the "statutory Communist" and "statutory Communism". Even when the Act purported to deal solely with Communism, its scope was considerably wider.

In 1976 any pretence that the Act was aimed at Communists alone was dropped. The Suppression of Communism Act became the Internal Security Act. "An attempt is being made to shift the emphasis of the Suppression of Communism Act so that it will be clear that the Act does not simply deal with subversion by Communists, but with subversion in general", said Mr J T Kruger, then Minister of Justice. He added :"All Communists are subverters, but all subverters are not Communists."[3] The Internal Security Act still contains the old anti-communism provisions, but under the 1976 amendment, whenever "the Minister is satisfied that any person ... engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order", that person may be subjected to various restrictions (s9 and s 10).

Opposition members of both Houses of Parliament have over the years repeatedly attacked the Act and amendments to it. When the original Suppression of Communism Act was introduced in 1950, Mr Strauss, acting Leader of the Official Opposition, rejected the Bill because "it creates a Fascist despotism in that it clothes the executive with unnecessarily wide and despotic powers, fails to provide for full and effective access to the courts, and makes intolerable inroads upon the freedom of the citizen".[4]

The opposition parties have in general agreed that Communism is an enemy which must be fought; the disagreement lies in the weapons to be used.

2. THE ROLE OF THE MINISTER OF JUSTICE

Government and Opposition have quarrelled over the Minister of Justice's role under the Act. A person may be banned because the Minister is "satisfied" that the person's behaviour warrants such action. The courts have no say in the matter. Sir de Villiers Graaff declared in 1962 that "everything depends on the suspicion the Minister may have".[5] A few years later Mrs Helen Suzman spoke of "the whim of the Minister"[6]. In 1976 Mrs Suzman claimed that, because everthing depends on the Minister's opinion, the Internal Security Act "is aimed not only at Communists and at people plotting subversion, but can in fact be aimed also at people who are working for peaceful, non-violent change in South Africa".[7]

In 1968, an Opposition Senator proposed that a three-judge panel replace the Minister in deciding who should be banned. The National Party response was that ideology cannot be fought by judicial methods. If a trial were held, information would leak out, witnesses would be pressurized into maintaining silence, and so on.[8] In 1954 a then United Party MP, Mr Blaar Coetzee (who subsequently joined the National Party) was of much the same opinion : "I have discussed this possibility of fighting Communism through the Courts of Law of this country with a very eminent QC. His reply to me was this : 'that whatever your law, I will get off nine out of ten Communists through the ordinary process of law'."[9] The conclusion would seem to be

that something as devious and secretive as Communism - or any subversion - must be fought with equal secrecy and unconventional methods.

"A court may interfere with a banning order only if it can be shown that the Minister of Justice acted in bad faith or failed to apply his mind to the matter; but in practice this is impossible to prove as the Minister cannot be compelled to disclose his reasons."[10] In November 1953, in the case of R v Ngwevela 1954 (1) SA 123 (AD), the Appellate Division held that the audi alteram partem rule applied to bannings under the Suppression of Communism Act, and that the Minister was therefore obliged to give the proposed banned person a hearing before restricting him. But legislation the next year amending the Act effectively excluded the rule. Since 1954 the Minister has been required only to give such reasons for and information about a banning "as can, in his opinion, be disclosed without detriment to public policy" (ss 9(2) and 10(1) bis). He normally refuses to provide any reasons, although Mrs Helen Joseph once received reasons for her banning, consisting mainly of a long list of meetings that she had attended and addressed. The only protection that the people of South Africa have against abuse of this Ministerial power is the character of the Minister himself. "It is obvious that the Hon the Minister will act with the greatest care in these cases," said a National Party Senator in 1968.[11] If he should not, there is no way to prove it, and nothing to be done about it.

3. "BANNING"

Banning is not the only action made possible by the Act. Other sections provide for different measures to be taken in the fight against subversion. For example, people may be interned (s 10(1)(a) bis), or they may be "listed". Anthony S Mathews says of listing: "Some ... penalties are incurred automatically; others follow only if the listing is acted upon by the Minister in accordance with the provisions of the Act."[12] Among the disabilities flowing directly from the listing are prohibitions on practising as an attorney, advocate, notary or conveyancer (s 5 quat), and on being quoted (s 11(g) bis). But the Minister may use the person's listing as the basis for further action - such as banning under s 5 or s 10. Certain other disabilities will then be imposed on the person as a result of his banning - such as prohibition on attending gatherings or receiving visitors. This paper deals specifically with the banning provisions of the Act, and with the disabilities that result from banning.

The commonly used terms "banning" and "banned people" are frowned on by the Government, which would seem to prefer the label "restricted people".[13] A banned person is not a criminal; he is neither tried nor jailed. He is served with one or more notices in which the Minister of Justice imposes certain restrictions on him in terms of ss 5(1)(e),9,10 and 11 of the Act. Sections 5(1)(e) and 9 concern the prohibition on attending gatherings and are very similar. Section 10 gives the Minister wide powers to limit the banned person's movement, associates and

actions. Section 11 deals with penalties and lists various offences under the Act.

On 8 February 1980 the Minister of Justice stated in Parliament that 152 persons, 33 of whom had left the Republic, were at that time restricted under the Internal Security Act.[14] By 30 May the numbers had risen to 166 persons restricted, 34 of whom had left South Africa.[15] At the end of January 1981, over 170 people were banned,[16] including five executive members of the Media Workers' Association of South Africa (MWASA) who were served with banning orders during December and January. South African Institute of Race Relations statistics show that 1 358 people were banned between 1950 and October 1978. Of these, 367 have left the country.[17]

Banning orders come in a wide variety of shapes and sizes. Orders usually last for two or five years. "During the 1960's the majority of initial banning orders were for two-year periods. Up until 1972 more two-year bans were issued than five-year bans. Thereafter the majority of bannings were for five-year periods."[18] Dr Nthato Motlana is a rare example of someone banned for one month (in August 1978).[19] Sometimes banning orders are lifted early : in 1971 Mrs Helen Joseph's third ban was suspended fifteen months before expiry when it was discovered that she had cancer; Halton Cheadle's five-year restriction was lifted after two years. Sometimes a banning order runs its full length and then, like Achmed Dangor's, is not renewed on expiry. But many banned people find their orders repeatedly renewed until it seems to them that they will remain banned until they die.

Helen Joseph's impressive collection of notices, served on her during the last 23 years, shows how banning orders differ. They can range from a single typed sheet, containing one or two prohibitions, to what Beyers JA in S v Qumbella 1966 (4) SA 356 (AD) at 360 called "a formidable document", pages long.

Mrs Joseph's first notice, served in 1957, with a duration of five years, prohibited her from attending "any gathering" which it had been decided in S v Kahn 1955 (3) SA 177 (AD) did not include social gatherings. She was also restricted to Johannesburg.

In 1962, almost six months after her first order expired, Mrs Joseph was banned again. This time she received three separate notices. One notice, under s 10, placed her under house arrest, limited her to the Johannesburg magisterial district, prohibited her from entering various "native" areas such as locations, compounds and hostels, and prohibited her from receiving visitors, except her doctor. Another notice, under s 9, prohibited her from attending "any gathering" under paragraph (a) as well as any social gathering and any political gathering under paragraph (b). The third notice, in terms of s 10 quat, ordered her to report daily to the police.

In 1966, while the 1962 bans were still in force, they were intensified to include a prohibition on entering trade union premises as well as bans on participating in anything to do with publication.

In 1967, shortly before the expiry of the 1962 restrictions, Mrs Joseph's banning orders were renewed and further

intensified. Prohibited gatherings now included gatherings of pupils or students assembled to be addressed or instructed by her. Prohibited areas included university, college or school premises, and Coloured or Asiatic areas. She was not allowed to enter the premises of or take part in the activities of any organization contemplated in GN R 2130 - that includes various organizations that are now banned as well as any trade union or employers' organization, and any organization that in any way discusses any government or state.

The 1967 banning orders were lifted in 1971 when it was discovered that Mrs Joseph had cancer, and after Mrs Helen Suzman had interceded for her. In 1980 she received her fourth set of restrictions. This time the order is for two years and is far narrower in its scope. There are only two prohibitions: Mrs Joseph may not attend political gatherings or gatherings of pupils or students assembled to be addressed or instructed by her.

4. WARNINGS

Are people ever given the chance to correct the error of their ways, and so avoid being banned, or are notices served on them unawares? Section 10(1)ter of the Act provides that, before banning a person, the Minister may require a magistrate to warn a person "to refrain from engaging in any activities calculated to further the achievement of any of the objects of Communism". Such explicit warnings are seldom given. Lt-Col Leon Mellet, of the Police Directorate of Public Relations,

explains that in many cases people are given indirect warning. The future banned person may be visited and questioned by the police, indicating that they are on his trail. Achmed Dangor received this kind of warning: "One of the cops called me for an interview and then made me an offer - work with the Security Police, you'll get paid and you won't get banned. If you refuse, you'll get banned." He refused.

Lt-Col Mellet stresses that even when people are not warned, their banning never comes as a surprise. They know very well why they are banned, and what they were doing to cause such a reaction. Having been involved in anti-apartheid activities from his early teens, Don Mattera is said to have felt no surprise at his banning. He had a long history of political agitation against the Government. Helen Joseph was slightly surprised when she was first banned in 1957. Such action seemed pointless in the middle of the Treason Trial, but as a very active and involved member of the Congress of Democrats, she probably knew the reasons for her banning. Although her most recent restriction was again a little unexpected, she must have known she had been inviting a reaction by making many scathing political speeches during the 1970's.

It seems, however, that for some people banning comes as a total surprise. Halton Cheadle's ban came completely out of the blue and without warning. "There were no reasons for my being banned" he says, except that "they didn't like the activities I was engaged in, which were trade union activities. I certainly wasn't a Communist or intending to overthrow the lawful regime."

5. EXEMPTIONS

The Minister may vary any banning order and grant exemptions to it (s 9(4) and s 10(1)(a) and (b). In addition, a banning notice will state that a certain magistrate has the power to authorise exceptions to the prohibitions in the notice. Mrs Winnie Mandela was at one time confined to the magisterial district of Johannesburg, but acquired an exemption from the Chief Magistrate of Johannesburg that permitted her to travel to Cape Town to visit her husband. In the case of S v Mandela 1964 (4) SA 123 (CPD) at 126 Steyn J held that " A magistrate is entitled when circumscribing the limits of the exemption, to define the ambit of the exemption as to place and as to time. Provided, however, that when he does so, he defines the limits of the exemption clearly and unambiguously and that he does not impose conditions which are unreasonable."

Exemptions are required for all sorts of actions. Helen Joseph needed an exemption to work in Roodepoort while she was confined to the magisterial district of Johannesburg. She also had to get an exemption before she could enter hospital for cancer treatment, because her house arrest order required her to be at home during weekends and at night. Halton Cheadle needed an exemption to enter university premises to write Unisa examinations. He also got permission to go out one night to a film show - something he had not done in eighteen months. Then there was sport: Cheadle says, "I applied for a lot of exemptions. I did it on the basis of sport. I used to swim for Eastern Province and Transvaal, and so I took up swimming again and got into the Natal side. "

But exemptions can be, and often are, refused. In 1971 Robert Sobukwe wished to leave South Africa permanently to take up the offer of a teaching post at an American university. He was at that time confined to the Municipality of Kimberley. The Minister of the Interior granted him a departure permit, but the Minister of Justice refused him permission to leave Kimberley and travel to Jan Smuts airport in order to leave South Africa. Sobukwe took the case as far as the Appellate Division, but his appeal was dismissed.[19a)] He remained in Kimberley until he died in 1978.

II THE DISABILITIES

A banning order, especially if it is one of the more severe ones, imposes disabilities that affect almost every aspect of a banned person's life. These disabilities may result directly or indirectly from the ban. A doctor may be explicitly prohibited from entering hospital premises, except as a patient. Thus even though the notice does not state "You may not practice as a doctor", that may be the indirect result of such a ban. The banning notice will affect not only the doctor's professional life: he will be unable to visit his child who is ill in hospital. No banning order decrees that your family shall suffer because you are banned, but that is the inevitable result. The tentacles of a banning order reach far into a person's daily life. "What hits you is the fact that you commit a crime by doing what other people do ordinarily", says Halton Cheadle.

1. GATHERINGS - SECTIONS 9(1) AND 5(1)(e)

Common Purpose

The meanings of "gathering" and of "attending a gathering" in terms of the Act have come under frequent scrutiny by our courts. Sections 9(1) and 5(1)(e) empower the Minister to prohibit people from attending gatherings. The Minister's power under these sections to dictate the life of a banned person is greater now than it was in 1950. Initially the Minister could prohibit a person from attending "any gathering in any place within an area and during a period specified in such notice" (s 9). According to the definition of "gathering" in s 1, a gathering had to have "a common purpose, whether ..... lawful or unlawful".

The earliest banning orders tended expressly to exclude bona fide religious, recreational or social gatherings from the prohibition; for example, the notices referred to in R v Sachs 1953 (1) SA 392 (AD), served in May 1952, and in R v Ngwevela 1954 (1) SA 123 (AD), dated April 1952. In terms of this sort of notice, banned people could go to parties, dances, play sport and attend church. Disruption of their social life was minimal.

Then the Minister's hand fell more heavily. People were banned from attending "any gathering in any place within the Union of South Africa and the Territory of South West Africa (for example, see R v Kahn 1955 (3) SA 177 (AD) at 182) with no mention of religious, recreational or social gatherings. In the case of R v Kahn the appellant had attended a party. Centlivres CJ held that the Crown had not succeeded "in establishing that the gathering in

question was any other than what it purported to be, viz : a social gathering" (at 183). He then referred to the definition of "gathering" and the requirement of "common purpose". For a gathering to be prohibited under the Act, it had to be one where "persons assemble in order to achieve some common object by concerted action" (at 184). And "in the case of a social gathering there is no intention to achieve anything by concerted action" (at 184).

The decision in R v Kahn was followed in many subsequent cases, the vital question being whether people had intended to achieve a common object by concerted action. In R v Mpeta 1956 (4) SA 251 (CPD) it was held that talking to workers at a fishing factory did not constitute attending a gathering; in Dudley v Minister of Justice 1963 (2) SA 464 (AD) a group of students assembled to be taught by the banned person had a common object but lacked the necessary concerted action, and so did not constitute a gathering; in Desai v Attorney-General, Cape, and Another 1964 (4) SA 90 (CPD) a city council meeting was held to have the requisite common purpose. As long as the common purpose rule applied, social life was relatively unhindered, although one's work might be affected by a ban on attending gatherings - as in Desai's case, or in S v Sader 1968 (2) SA 716 (NPD) where a doctor was convicted for attending a gathering of doctors at a hospital.

Today it seems that even where common purpose is required, it is no protection at all. The Appellate Division has now given the term "common purpose" a far wider interpretation than that applied in R v Kahn and during the last 25 years. The

decision in S v Ziggolo 1980 (1) SA 49 (AD) concerned the definition of a gathering in the Riotous Assemblies Act 17 of 1956, but comments in the judgment apply equally to the Internal Security Act. Rumpff CJ accepted that in order for there to be a common purpose there must be the intention to achieve "some common object by concerted action" (at 56), but in his opinion, "'n byeenkoms van persone wat gesamentlik wil luister, sing, bid of oor 'n bepaalde onderwerp praat, [is] 'n byeenkoms van mense met 'n gesamentlike doel ... . Dergelike byeenkomste is byeenkomste van mense met die doel om gesamentlik iets te doen buite en behalwe die blote byeenkoms" (at 59). In other words, a gathering with any purpose other than simply to gather has the necessary common purpose. Although the wording in the Act is "geweldig wyd" (at 57), the courts, Rumpff CJ said, must follow a restrictive approach in order to avoid absurd consequences "wat die Wetgewer nooit kon bedoel het nie" (at 57). Rumpff CJ felt unable to lay down any hard and fast rule; it is up to the court in each case to decide whether "dit onmoontlik die bedoeling van die Wetgewer kon gewees het om so 'n byeenkoms te laat belet" (at 57). Uncertainty prevails, and the banned person's confusion is increased.

The Non-Common Purpose Gathering

After the 1962 General Law Amendment Act, it became possible for the Minister to prohibit attendance at "non-common purpose gatherings" (S v Bennie 1964 (4) SA 192 (ECD) at 195). Under the new sections 9(1)(a) and 5(1)(e)(i) he could prohibit attendance at "any gathering", as before; while under 9(1)(b) and 5(1)(e)(ii), he could forbid attendance at "any particular

gathering, or any gathering of a particular nature, class or kind". The amended s 1 provided that the common purpose requirement did not apply to gatherings forbidden under s 9(1)(b) or s 5(1)(e)(ii). "This amendment was made, it would seem, in order to meet the situation resulting from the decision in the case of R v Kahn" (S v Arenstein 1964 (4) SA 697 (NPD) at 699). Common purpose has, however, remained relevant in a few post-1962 cases such as Desai, Dudley and Sader.

Many banning orders contain a prohibition under s 9(1)(b) on attending "any social gathering, that is to say, any gathering at which the persons present also have social intercourse with one another"; as well as a prohibition on attending any political gathering, "that is to say, any gathering at which any form of State or any principle or policy of the Government of a State is propagated, defended, attacked, criticised or discussed"; and sometimes "any gathering of pupils or students assembled for the purpose of being instructed, trained or addressed by" the banned person.

In court cases concerning violation of banning orders, the stress on common purpose, so evident in the late fifties and early sixties, has changed to an attempt to ascertain exactly what constitutes a social gathering. Most cases concern attendance at social rather than political gatherings; the definition of a social gathering is so broad and nebulous that it is easy to transgress. "I have no clarity in my mind as to what, in terms of this Act, is a social gathering", stated Beyers JP in S v Hjul 1964 (2) SA 635 (CPD) at 636. Since that comment was made, judges have wrestled repeatedly with the

definition, but "The success of such efforts, on the whole, has not been striking" (S v Meer 1981 (1) SA 739 (N) at 744. In Meer's case, the judges stressed that they were not criticizing "the judicial effort which has been spent on the definition of a social gathering"; the fault lay rather in the definition's "stubborn resistance to the process" (at 747). Let us now consider some of those judicial attempts to make sense of an "incorrigibly obscure" definition (at 748).

In Hjul's case it was held that standing at a bar with someone, and then playing snooker with that person, did not constitute a social gathering.

In S v Arenstein 1964 (4) SA 697 (NPD), Fannin J held that having tea in a tearoom with three other people did not constitute attending a gathering, since the meeting was spontaneous and occurred by chance. Fannin J referred to the word "attend". "There are many circumstances in which, while it might not be incorrect to say that a person was part of a gathering of persons, it would be wrong to say that he had 'attended a gathering'" (at 701). He continued : "...the kind of gathering to which the Act authorises the application of a prohibition is a gathering which can be 'attended'. It is difficult to state with any greater degree of precision the test which must be applied to ascertain upon which side of the line a particular gathering will fall, but it must, I think, be something more purposeful and less casual and spontaneous than, for example, a bus queue or a crowd at a street fire or accident" (at 701). In Arenstein's case Fannin J and Miller J agreed that "...it was never intended that any and every meeting of two or a

few persons who conversed socially with one another was to be regarded as 'a social gathering' which such persons 'attended'" (at 702). It would be "absurd" and "unrealistic" (at 702) to say that casual, chance meetings were social gatherings under the Act.

In the 1964 Annual Survey Professor Ellison Kahn commented : "Despite the elimination by the legislature of the test of common purpose, in an attenuated form, through the requirement of 'attendance' at a gathering, purpose is still a requisite."[20] In the years that followed, people were convicted of attending gatherings that were ludicrously trivial, but which complied with the "attenuated form" of purpose test : a picnic (S v Tobias 1967 (2) SA 165 (CPD)); a dinner party (S v Naicker 1967 (4) SA 214 (NPD)); a braaivleis (S v Carneson 1967 (4) SA 301 (CPD)); a tea party (S v Cheadle 1975 (3) SA 457 (NPD)); contract bridge (S v Wood 1976 (1) SA 703 (AD)). But as Beyers JP pointed out in S v Tobias, the triviality was irrelevant. "Here is an Act of Parliament which must be obeyed" (at 165), and since the picnic in question was "an organised, predetermined, social occasion" (at 166), the appellant was convicted.

It was not enough even for a banned person to isolate himself from the party by sitting alone in a room, seeing other guests individually. In S v Beard 1965 (4) SA 543 (ECD), it was held that the appellant "went to the house for the express purpose of being associated with the gathering" (at 545), even though he sat apart from the others, in the kitchen.

In S v Naicker 1967 (4) SA 214 (NPD), Milne JP was

"strongly inclined" to think that a gathering confined to family members was not a social gathering within the meaning of the banning order (although the Minister may of course specifically forbid a "family gathering"). The judge considered the absurd results stemming from accepting a family gathering as a social gathering : a banned person eating breakfast with his wife and child would be attending a social gathering (at 219). Even if such a construction is acceptable, "the police and public prosecutor very sensibly ignore such occasions completely ... they regard it as implicit that they are not included in the banning order" (at 220).

S v Carneson 1967 (4) SA 301 (CPD) took the discussion of "attending a social gathering" a step further. Tebbutt AJ said that not all the persons at a gathering had to have social intercourse with each other for it to be a social gathering : "it would suffice if certain of the persons there present had social intercourse with one another. The appellant could attend such a gathering even though she took no part in the social intercourse at all ... . It is therefore the physical presence of such persons at prohibited gatherings that the legislation is designed to prevent" (at 305). As in Arenstein's case, mens rea was also essential : the banned person had to intend to be present. If a banned person remained at a place after discovering that a social gathering was taking place, that person contravened his order. Tebbutt AJ's view of "attending" a gathering was extremely wide.

In S v Saliwa 1969 (1) SA 640 (ECD) the issue was not whether the appellant had "attended" a gathering - he had deliberately chosen to be present at a Xhosa ceremonial sacrifice.

The question was whether there had been a social gathering at all. Addleson J held that since the main purpose of the gathering was not social, the gathering was lawful. "Where ... it appears that persons have met together for a legitimate purpose, the fact that they may also mix socially with one another for some part of the time, will not necessarily mean that the gathering is one at which 'they also have social intercourse with one another'" (at 642). Social intercourse was permissible when it was "incidental", "an inevitable concomitant of the lawful gathering" (like greeting a Minister after church) (at 642). Social intercourse at a lawful gathering was not permitted when it "was a clearly separable and distinctly recognisable activity going beyond what a reasonable man would regard as the scope of the gathering which was permitted" (at 642).

Basson AJ held in S v Ntwasa 1974 (3) SA 671 (NCD) that "[t]o establish that a gathering is a social one it is not necessary to show that social intercourse was the sole purpose of the gathering; any gathering will qualify if one of its consequences is that those present have social intercourse" (at 672).

In S v Keegan 1976 (1) SA 30 (CPD) Vos J said that a social gathering required "an element of cohesion or mutuality among those present" (at 32). His view of "attending" was narrower than that expounded in Carneson's case. As in S v Beard "a mental element, the intention to take some part in the proceedings" was necessary (at 33).

Van Heerden J in S v Mandela 1979 (1) SA 284 (OPD) summed up in part the legal position relating to attending social gatherings : "There cannot be a social gathering ... unless, as

a first requirement, the persons concerned (or at least some of them) are together for the purpose of having social intercourse. This does not mean that they must necessarily get together for such a purpose; it is sufficient if the purpose originates while they are together. It is, however, not sufficient if some social intercourse incidentally takes place... . The answer to the question whether two or more persons got together, or were together, for the purpose of having social intercourse will often be a matter of inference. In each case it will be necessary to have regard to, inter alia, the length of the period during which they were together and to what was said or discussed" (at 293). He also pointed out "that a restricted person can attend a social gathering even if he does not take part in the conversation and has no intention of doing so" (at 293).

The problem of how many people constitute a social gathering has been referred to occasionally in cases over the years, in obiter dicta. In Dudley's case Steyn CJ talked of (at 469): "Two persons being sufficient for a gathering in terms of the Act" without considering the matter fully. Fannin J in Arenstein's case (at 700) discussed the question of the number of people necessary for a gathering, but based his decision on the meaning of "attend". He referred to the words "of any number of persons" in the definition of a gathering in s 1: "[T]he word 'any' may well be understood to convey the idea that there is no limit up or down in the number of people which may constitute a 'gathering'" (at 700). Miller J agreed : "Accepting as I do that it is possible for a meeting of two persons to constitute a 'gathering' for the purposes of the relevant legislation", he said at 702. In both Beard's case (at 545) and Naicker's case

(at 219) the judges avoided discussing the difficult problèm of numbers, although Milne JP in S v Naicker did comment "in passing that it would be perfectly permissible to say of two friends that they had 'forgathered' for a mutual celebration" (at 219).

Against this series of comments, all tending towards the view that a gathering in terms of the Act might include only two people, was set one case - Sachs v Swart NO 1952 (2) PH K137 - a Transvaal decision - where it was held that a considerable number of persons was necessary to constitute a gathering under the Act.

Two Appellate Division decisions have now taken the matter somewhat further. In S v Wood 1976 (1) SA 703 (AD) the question was whether four people, playing bridge, formed a social gathering. Botha JA considered the question of the number of people constituting a gathering in some depth. Stating that "the word 'gathering' ... must be construed in the light of the words 'of any number of persons'" (at 706), he concluded : "the definition of 'gathering' ... does not require for the constitution of a gathering the coming together of a considerable number of persons, but of any number from two upwards" (at 707).

Trollip JA in S v Weinberg 1979 (3) SA 89 (AD) agreed with Botha JA's conclusion that a gathering does "not require the coming or being together of a considerable number of persons, but of any number from two upwards" (at 101). In this regard Trollip JA, like Botha JA, stressed the use of the phrase "of any number of persons". In addition, the judge said that the prohibition applied to "a gathering that is wholly or partly social", but that social intercourse must play an "appreciable" role (at 102). To determine whether the social intercourse was of an appreciable

amount "is a question merely of degree that is objectively ascertainable from the facts of the case" (at 102). He also reaffirmed that the prohibition applied only to "an intentional or deliberate coming or being together of persons before they constitute a 'gathering'; and to an intentional or deliberate 'attending' of appellant at the gathering. Thus a casual or chance, spontaneous meeting of persons ... would not constitute either a 'gathering' or an 'attending' of it" (at 103-104).

Miss Weinberg's appeal succeeded because Trollip JA interpreted the words of the notice itself, rather than of the Act, liberally. The Minister was free to specify a larger minimum than two. Trollip JA considered dictionary definitions of "social", some of which pointed to "the involvement of at least three persons" (at 105). Looking also at the definition of social gathering in the notice (see above p 15), he concluded that the notice required at least three persons to be present at the gathering contemplated.

The question of how many people constitute a gathering is therefore now in the Minister's hands. If he continues to issue banning orders using the same wording as is currently common, then the banned person will be allowed to make a social visit to one other person. But if the Minister changes the wording to indicate that a minimum of two people form a social gathering, then the banned person will be denied even this slight leeway.

By studying these judgments, from Hjul to Weinberg, the banned person may sometimes be able to tell when he is on firm ground : he obviously may not attend a friend's party. But all

too often it is impossible to judge when that firm ground will become quicksand. A banned person may stand in a bus queue and say good morning to his neighbour, but he may not arrange to meet two friends for lunch. If he is only prohibited from attending social gatherings, then he may go to a business meeting or a church service, provided that any social chat that occurs is merely incidental to the meeting. He is probably safe enough with a group of close family members, if Milne JP's comments in Naicker's case are anything to go by. The courts are unlikely to convict a banned person of attending a social gathering by dining with his family, unless of course the Minister makes it clear in the banning notice that this is what he intends.

It was this very uncertainty arising from the standard definition of a social gathering that led to the seminal 1980 decision of S v Meer. In previous cases, the courts have taken the validity of the standard definition "for granted once that was left unchallenged" and so "have had no option but to make what sense of it they could" (at 747). Shearer and Didcott JJ in S v Meer approached the problem from a new angle, boldly rejecting the entire definition. After presenting a concise survey of case law on the question of social gatherings, and focusing on the many problems the definition creates, the learned judges stated that in spite of their "training and experience", they were "at a loss to know exactly what the appellants' banning orders required them to shun" (at 747). They had "no clear conception of a social gathering as defined" (at 747) and the definition was void for uncertainty as was the prohibition on attending social gatherings.

A report in The Star of Wednesday December 3 1980 shows what effect the decision in S v Meer may have on banned people. As a result of this judgment, one banned person at least apparently intends to defy sections of the new five-year banning order that prohibits him from attending social gatherings.

It remains to be seen what the reaction of the Appellate Division and the other Provincial Divisions will be to the Meer decision. The Attorney-General has appealed against this decision, an appeal which is to he heard in May 1981.

The Government will not meekly accept the thwarting of its will. The response to the findings in favorem libertatis in R v Ngwevela and R v Kahn was prompt; one expects a similar reaction in this case. Shearer and Didcott JJ indicated that "Had the notices simply prohibited the appellants from attending what in common parlance were social gatherings, the banning orders would have contained a hard core of certainty, sufficient for present purposes" (at 743). Thus, if the Government did away with the definition entirely, the courts would accept a prohibition on attending social gatherings. A further possibility is to make the definition unassailable by including it in the Act itself. Had the Act spelled out "the detailed terms in which banning orders may be issued ... that would have disposed of the appellants' contention. Just as the legislature's own commands are unimpeachable in our law, no matter how vague they may be, so is any delegated by it which has a text it has deliberately chosen to prescribe or allow" (at 742-743). S v Meer is an encouraging and welcome decision, but however determined a stance

the courts assume, Parliament, wielding its sovereign power, can find a way past the obstacle created by Meer's case and any similar decisions.

What of a political gathering? In the light of Weinberg's case, it seems that a banned person meeting a friend and discussing any part of the Government's policies will be attending a political gathering. Interviews for this project with a banned person such as Helen Joseph, where the Government and its anti-subversion measures were discussed, might even constitute a political gathering. Since most cases involve social gatherings, the courts have not yet spoken on this subject.

2. SECTION 10

So much for s 9 and its prohibitions on attending gatherings. Section 10 gives the Minister further powers to restrict people. In the original Act, the Minister could merely prohibit a person "from being within any area" defined in the notice. Under the present s 10(1)(a), the Minister may prohibit a person "from being within or absenting himself from any place or area mentioned in such notice or ... communicating with any person or receiving any visitor or performing any act so specified". It is conceivable that the Minister could confine a person to a single room for twenty-four hours a day, forbid him to communicate with anyone at all - even his wife - and forbid him to receive any visitors except his lawyer. The words "performing any act", if taken literally, make the mind boggle. Such harsh banning notices have never been served, although people have been

confined to tiny houses or flats under twenty-four hour arrest, forbidden to receive any visitors, and have had to seek special permission to communicate with their wives or husbands when both spouses are banned.

"Place or Area"

Let us consider the prohibitions relating to "place or area". The notice served on Mr Ngwevela in April 1952 prohibited him from "being within any province in the Union of South Africa, or the Territory of South West Africa, other than the Province of the Cape of Good Hope" (Ngwevela's case at 126). This was in terms of the original Act: he could only be "prohibited from" being somewhere.

The 1962 General Law Amendment Act extended the scope of s 10. Under the new amendment, a person could be confined to a certain area; prevented from entering a certain area; prevented from leaving his home during specified hours; and prevented from receiving visitors or paying visits.

People are frequently prohibited under s 10 from entering factories, mines, trade union premises, publishing or printing houses, courts of law, and even harbours or railway premises. All these limit job opportunities and cause other hardships: a banned person may not be allowed into a railway station to wave goodbye to a departing friend. A very common prohibition is on entering the premises of any educational institution. This will end the careers of teachers and

lecturers, prevent students from studying, and even make a banned parent unable to attend a school swimming gala. Another provision in most banning orders keeps the different races apart. A white person (like Helen Joseph) will be prohibited from entering any Indian, Coloured or Black areas, such as hostels and townships. An Indian like Achmed Dangor will be prohibited from entering any Black Township. A Black person - such as Winnie Mandela (see S v Mandela 1968 (4) SA 123 (CPD) at 124) - may be prohibited "from being within any location, Bantu hostel or Bantu village ... except Orlando where she was resident". The above restrictions play havoc with a banned person's professional, social and family life.

Many banned people are confined, under s 10, to a particular magisterial district. This prevents them from doing something as ordinary as taking a holiday in another part of the country. Halton Cheadle was restricted to the magisterial district of Durban; Helen Joseph was limited to the Johannesburg magisterial district by her first, second and third banning orders. Although confinement to a magisterial district is common, it is not an inevitable part of a banning order. Mrs Joseph's present banning order contains no such restriction. Don Mattera's first order restricted him to Johannesburg; his present one does not, but Mr Mattera is so conditioned that he never budges from Johannesburg. Achmed Dangor's notice did not confine him to any magisterial district, and he travelled widely inside South Africa during the five years that he was banned.

As has been explained, banning orders can and do vary immensely. A person may be restricted to South Africa and be

forbidden to enter South West Africa (as Don Mattera is); or he may be restricted to a province or to a magisterial district or a township, or even to his home - so-called "house arrest". House arrest was made possible by the 1962 General Law Amendment Act. People have been placed under 24-hour house arrest, but the most common version restricts the banned person to his home at night and at weekends.

If he fails to be home by the specified time, a banned person can be convicted of an offence (s 11(i)). Halton Cheadle had to be at home between 6.00 pm and 7.00 am. One evening he went for a swim and only arrived at 6.30 pm. "They were waiting. They warned me that next time they would charge me", he says. A person under a dusk-to-dawn curfew has no night-life. Even going to an evening film is impossible without a special exemption. If a banned person is confined to his home at weekends he will need permission to attend a church service on Sunday morning.

Mr B J Vorster, Minister of Justice in 1962, explained his reasons for introducing house arrest: "I want to act in such a way that the charge cannot be levelled against me that I am depriving the man of his means of livelihood and taking him away from his wife and children. On the contrary, I want to do them the favour of keeping him with them in the house so that he can look after them, as he ought to do, instead of getting up to mischief at night."[21] Banned people tend to be rather more cynical. So far from being the humane action outlined by the Minister, house arrest is simply "jail on the cheap", where the government does not have to provide the "prisoner" with

food and shelter, and where the banned person is to an extent his own jailer. But, as Halton Cheadle says, "I'd prefer to be under house arrest than in jail, that I can assure you!"

There was at first some doubt as to the meaning of the words "any place" in s 10(1). In Hodgson's case the appellant was, among other things, prohibited from absenting himself from his three-roomed flat in Hillbrow. Dowling AJP held that there was "a necessary implication that 'any place' in s 10(1) as amended includes a house or residence" (at 539). The General Law Amendment Act 37 of 1963 later amended s 1, with retrospective effect, inserting a definition of "place" which ended any uncertainty. A "place" can include "any premises, buildings, dwelling, flat, room office, shop, structure, vessel, aircraft or vehicle, and any part of a place". If one's house is spacious, with a large garden, house arrest loses some of its sting, but if one is confined to a cramped flat, or to a tiny house in Soweto, or to a single room, the restriction is severe indeed.

Visitors

Mere confinement to one's home would not in itself be too bad, if one could receive visitors. But most house arrest orders (and even some orders that do not impose house arrest) are accompanied by a list of other restrictions, also in terms of s 10. The banned person is frequently forbidden to receive visitors, except his lawyer (as the Act stipulates), and other permitted visitors mentioned in the notice. So, as mentioned in S v Pityana 1976 (4) SA 823 (ECD), Barney Pityana was

prohibited from receiving any visitor other than a non-listed and unrestricted medical practioner, and his mother.

There are numerous cases concerning alleged violations of the no-visitor rule. In S v Mandela 1972 (3) SA 231 (AD) at 237, Potgieter JA held that "The words 'receiving any visitor' must ... bear a meaning other than one prohibiting any communication whatsoever", since s 10(1)(a) provided for that possibility in the words "communicating with any person". So, if someone entered a banned person's house "in order merely to take delivery of something" from the banned person, "such person will not be a 'visitor' in terms of s 10(1)(a)".

In S v Pityana, the appellant had been convicted by a magistrate of receiving visitors in the form of his younger brother and sister. Stewart AJ held that "the two children changed their domicile and went to live with the appellant where, for all practical purposes, he treated them as his own children" (at 825). The judge also said that "Whatever the definition of a visitor may be, I do not consider that it can be extended to cover a person, and more particularly a child, who moves from one residence to another and takes up his abode in the second residence where he is received with the object that he remains there indefinitely as a member of that family" (at 825-826). "Primarily" he added, "'The proper meaning of a visitor is one who comes to see and not to stay'" (at 826). A visitor must lack permanency.

Mrs Winnie Mandela has clashed more than once with the police on the subject of visitors. In Mandela v Prinsloo en 'n Ander, de Wet AJP held that "Slegs die ingeperkte persoon is

verbied om besoekers to ontvang en geen verbod word geplaas op die ontvangs van besoekers deur enige lid van haar huishouding, selfs indien sodanige lid 'n minderjarige kind van die ingeperkte persoon is nie" (at 785). He also said: "Dit sal afhang van die omstandighede waaronder elk van sodanige besoeke plaasvind om te bepaal of besoek afgelê word by die ingeperkte persoon of by haar dogter" (at 786).

In S v Mandela 1979 (1) SA 284 (OPD) it was said by Van Heerden J that "The enquiry as to whether a restricted person received visitors is basically a factual one. It is clear, however, that a person cannot be said to have received visitors unless he intended doing so" (at 289). Mere "passive admission" of people into her house was not a "positive reception" by Mrs Mandela (at 290). In fact her daughter had received these particular people as visitors.

It would therefore appear that other members of a banned person's household may receive visitors; that visitors do not include permanent members of the household; that one must intend to receive visitors in order to be convicted; and that a prohibition on receiving visitors does not forbid all communication with people who come to your house (for example, to take delivery of something).

Halton Cheadle's fiancée, living with him at the time, was not a "visitor". She was permitted to receive visitors, but when Mr Cheadle joined the group for tea, he was guilty of attending a social gathering. He says: "When people did come, of course you had to break the law. There was no way you could live without people coming to see you ... we

used to close all the curtains, close all the doors."

Since 1956 Mrs Helen Joseph has lived alone. She was under house arrest for nine years, and did not even have anyone else living in the house with her. She had a char and since the woman was paid she was not a "visitor". For nine years Mrs Joseph was alone except for her pets, every night and at the weekends. She was alone, but never lonely, filling her time with writing, research and studying. Mrs Joseph made many friends by telephone and international correspondence. There was one Christmas party when friends lined up in the street, with a cathedral choir singing carols, and came one by one to the gate to speak to her. In fact Mrs Joseph could probably have had paying lodgers in the house, as Sheila Weinberg does, since they do not fall into the category of "visitors".

Communication

Banned people are also forbidden by their notices from communicating with other banned people. There are many cases where husband and wife are both banned. Sometimes the notice itself states that they may communicate with each other; sometimes the couple must apply for an exemption. Achmed Dangor mentions a couple in Durban, Ela and Mawalal Ramgobin, who were forced to do this. Dangor condemns the insensitivity of a system that produces such a situation.

Mrs Winnie Mandela was convicted in the magistrate's court of communicating with another banned person. The Transvaal Provincial Division held that the two were guilty of

communicating through their children, since "as long as something, however unimportant, passes from mind to mind, there is communication" (S v Mandela 1974 (4) SA 878 (AD) at 881). The Appellate Division found Mrs Mandela not guilty of indirect communication on a technicality, but she was convicted of another instance of direct communication.

Achmed Dangor broke his banning order frequently when it came to communicating with other banned people. At one stage he even had a banned friend living illegally in his house, while on his travels around the country he often stayed with banned people. Why was this flagrant violation of his banning order never noticed and punished? Dangor says: "It was obvious to us that they knew about it ... but they didn't once charge me ... . This was a very subtle form of trying to discredit me, because people started going around and saying 'He goes where he wants to, mixes with whom he wants to and never gets charged. So obviously there must be something wrong.'"

Reporting to the Police

A person subjected to a comprehensive and severe banning order frequently receives three separate notices. The first prohibits attendance at gatherings; the second confines him to a certain area, prohibits him from entering specific places, prohibits visitors and so on; the third orders him to report to the police in terms of s 10 quat.

In the earlier banning orders, people such as Helen Joseph had to report daily, except on Sundays and public

holidays. Today, they are more likely to be required to report once a week. Some banned people, like Don Mattera and Achmed Dangor, do not have to report at all. For those who do have to report, s 10 quat is a trap all too easy to fall into. A single instance of human forgetfulness may earn you the statutory minimum sentence of twelve months in jail, probably with all but a few days suspended. But those few days in jail will disfranchise you for life, in terms of the Electoral Laws Amendment Act of 1969 (see below, p 43).

Some get away with failure to report. A former banned person, who had to report once a week, explains: "There's a big book ... you know your page and you sign your name and the date. Once I forgot to do so, and I arrived there the next day. The guy was so thick that I put the previous day's date on!" Other people have not been so lucky. Helen Joseph once reported three hours late and went to jail for her error.

The Appellate Division held in S v Arenstein 1964 (1) SA 361 (AD) that "mens rea is ... an essential ingredient of the offence" of failing to report (at 366). But any failure to exercise the high degree of circumspection and care demanded of the banned person by the legislature constitutes the necessary mens rea. "Mere inadvertance or thoughtlessness cannot ... be any justification for a failure to exercise that degree of circumspection" (at 367). It was not enough that Mr Arenstein had "genuinely forgotten" to report.

In S v Jassat 1965 (3) SA 423 (AD), the appellant "took what were obviously inadequate steps to prevent himself forgetting" to report (at 429). He had therefore "failed to

exercise that very high degree of circumspection and care demanded" (at 429). Mere forgetfulness is never an excuse, although, as Steyn CJ said at 425, "there may be occasions when a person will "be overcome by such distress or be thrown into such a state of confusion as would cause the duty to report to pass out of the mind of the most reasonable and careful of men", in which case his forgetfulness would be a suitable defence.

3. PROFESSIONAL DISABILITIES

By restricting basic freedoms such as freedoms of movement, residence, speech, association, organization and assembly, a banning notice prevents a person from working where and at what he pleases. These professional disabilities are extensive.

Under s 5 quat, listed persons and those convicted of certain offences under the Act are prohibited from practising as advocates, attorneys, notaries or conveyancers. This is the most direct of the professional disqualifications under the Act, but it applies only to those banned people who are listed. It is a consequence not of banning, but of listing.

Amost every banned person's job or profession suffers as a result of his banning. Not one of the banned or formerly banned people interviewed for this project managed to retain his job once he was banned, although Mrs Joseph did keep hers until her banning orders were made more severe in 1966.

Halton Cheadle was working as a trade union organizer at the time of his banning. In terms of his order, he was not

permitted to enter trade union offices or factories, among other places; nor was he allowed to engage in trade union activities. As a result, he could no longer carry on his work. He was jobless for between three and four months, before getting work as a carpenter on a building site. That was not the end of his problems. The police "immediately rushed in ... to try and stop me getting the job", suggesting that he was illegally on factory premises. In this case, the police were wrong: a building site is not a factory in terms of the Factories Act, but other people have been convicted of working in factories in violation of their orders, for example, the appellant in S v Qumbella 1967 (4) SA 577 (AD).

When she was banned in 1957, Helen Joseph was the secretary for the Transvaal Clothing Industry Medical Aid Society. She was able to continue this work until her second banning order was intensified in 1966, prohibiting entry into trade union premises. After six months out of work, Mrs Joseph managed to get a job in a bookshop. Two years later, friends offered her work in a hotel in Roodepoort. Because of her restriction to the magisterial district of Johannesburg, she had to get special magisterial permission before accepting the offer. Now Mrs Joseph lives on her old-age pension and adopts the attitude that the Government can support her.

Achmed Dangor's banning order, among other restrictions, prevented him from, as he says, "addressing any young people in any form - lecturing or tutoring them or addressing more than one of them for any reason whatever". Since Dangor was at the time South African Institute of Race Relations Youth Organizer

in the Eastern Cape, he too lost his job. He was unemployed for about six months before finding work with a large American company. He says: "The way they phrased the banning order [prevented] me from working at what I wanted to do. They were forcing me to go back to a commercial job."

Banned university lecturers and teachers often lose their jobs because they are not allowed on the premises of educational institutions. Sometimes their orders are altered to allow them to continue teaching. A Witwatersrand University senior personnel officer explains that there have been two such cases at Wits. The university took an ad hoc decision to continue paying the lecturers while they were prevented from working, and while representations were made to the Minister to amend the banning orders. The appeal to the Minister took a long time but was successful. Mr Douwes-Dekker was a part-time lecturer in Industrial Sociology at the University of the Witwatersrand at the time of his banning.[22] He was permitted to continue lecturing after an appeal by the university. Fatima Meer, a sociology lecturer at the University of Natal, is another lecturer given special permission to continue teaching.[23] A prohibition sometimes included in banning orders (like Achmed Dangor's) on attending "any gathering of pupils or students assembled for the purpose of being instructed, trained or addressed by you" would have an equally detrimental effect on a a teacher's career. A general prohibition on attending "any gathering" (in terms of s 9(1)(a) or s 5(1)(e)(i) was held in the case of Dudley v Minister of Justice 1963 (2) SA 464 (AD) not to apply to a group of students assembled in a classroom for instruction. Such a gathering lacked the requisite "common

purpose." In terms of Dudley's case, such a prohibition alone would therefore not stop a lecturer from working. But Rumpff CJ's comments in S v Ziqqolo, where he interpreted "common purpose" very widely, have cast doubts on the matter. The Chief Justice said that the Dudley case concerned "'n skoolklas... waar gewone skoolonderrig plaasvind deur die onderwyser, en moontlike vrae van die leerlinge. Dit skyn duidelik te wees dat as die onderwyser sou toelaat dat een of ander onderwerp deur onderwyser en leerlinge saam bespreek word (soos dikwels in universiteitsklasse kan gebeur), sou die klasbyeenkoms ... 'n byeenkoms wees van persone met 'n gemeenskaplike doel. Na my mening is 'n skoolklas 'n byeenkoms van leerlinge wat wel 'n gemeenskaplike doel het, nl om gemeenskaplike onderrig te ontvang" (at 58).

Banned university students who are prohibited from entering university premises have to end their studies. Again, special permission may sometimes be granted, allowing them to continue with their degrees. Halton Cheadle says: "Once I was banned I couldn't continue with the course I had intended to study at Natal, so I studied at the University of South Africa." But even then he had to get permission to go on to a university campus to write his examinations.

Section 11(g) bis

In terms of s 11(g) bis, no "speech, utterance, writing or statement" of a person banned under sections 9 or 5 may be recorded, reproduced, printed, published or disseminated. Like other journalists, the black writer, poet and Star journalist, Don Mattera, found his job terminated by his banning order.

Mattera was fortunate. His editor was prepared to negotiate for some nine months with the Minister of Justice to get the order slightly relaxed, so that Mattera, although still not allowed to work as a journalist, could do a "back-room" job at the Star. Today Mattera is a sub-editor, not allowed even to write headlines. It must be a frustrating job for a trained writer.

The prohibition in 11(g) bis affects all banned writers. Helen Joseph, Don Mattera and Achmed Dangor have all suffered. If a banned person's writing can be smuggled out of the country, it may perhaps be published overseas, but a point that all banned writers make is that the reading public they want to reach is in South Africa. Messages these writers wish to convey must filter back illegally, making little impact in this country. "The biggest deprivation was really that you couldn't publish anything. Nothing else really mattered. It was communication: that was what our lives were really about," explains Achmed Dangor. Dangor was banned from 1974 to 1979. He had been a writer, involved with Don Mattera in a group called "Black Thoughts", which did poetry readings and played music in the black townships, but had to stop these activities while he was banned. After his banning order expired, Dangor was invited to a poetry reading, where he was introduced to those present as a "pre-76 writer". He says: "I sort of had a feeling that they regarded us as prehistoric ... he was actually saying we were irrelevant. This is what a banning order does to a person. It makes people forget you."

GN R296 and 2130

Further job restrictions are found in two Government Notices of the early 1960's. GN R296, dated 22 February 1963, provides that all listed people, officers or members of an organization declared unlawful, and those who are banned by notices under the Act are prohibited from being office-bearers, officers or members of "an organization which in any manner prepares, compiles, prints, publishes or disseminates any publication as defined in the Suppression of Communism Act", or which assists in such work. A "publication" in s 1 of the Act is "any newspaper, magazine, pamphlet, book, hand-bill or poster". Clearly, anyone working for a company engaged in publications, and who is subject to the above prohibition, will lose his job.

GN R2130 of 28 December 1962 is even more sweeping. It prohibits banned and listed people, and former officers or members of unlawful organizations from being office bearers, officers or members of 35 political or quasi-political organizations, most of which no longer exist today, as well as their affiliates, and "any organization which in any manner propagates, defends, attacks, criticizes or discusses any form of State or any principle or policy of the Government of a State or which in any manner undermines the authority of the Government of a State". The people mentioned above are also forbidden to belong to any trade union or employers' organization. Anyone working for any such organization - for example, a trade union official - will be unable to continue his work.

House Arrest

A banning order severely restricts employment opportunities even if the banned person is not under house arrest. House arrest immediately increases the banned person's difficulties. If he is restricted to his house at weekends and from dusk to dawn, he will be unable to work late for fear of breaking his curfew. He will require special magisterial permission to work on Saturday mornings if his job demands it, as Mr Qumbella did (mentioned in S v Qumbella 1966 (4) SA 356 (AD) at 360). More extensive house arrest makes life harder still. Achmed Dangor talks of a man in Durban who was allowed out of his house only between noon and 2.00 pm. He spent those two hours in a frantic rush, selling magazine subscriptions: "In two hours he would have to do what normal people can do in eight hours work."

People under 24-hour house arrest cannot work at all. A husband and wife are never both placed under 24-hour restrictions; someone is left to be breadwinner. At least one family has had to live on the money earned by the wife who did washing while her husband was under 24-hour house arrest.

"I was one of the luckier ones", says Achmed Dangor. "I was able to survive because I got a job soon." Even so, the Dangors found those first six months without work financially difficult. What of those who simply cannot find work? Dangor mentions banned people who left South Africa because they were starving. Trade unions cannot be of much help to jobless members, if Lucy Mvubelo's comments are of general application. She says that her union lacks the funds necessary to support such people. All they can provide is moral support. Under s 10(2)

the Minister may "in his discretion" provide a person banned under s 10(1) with "a reasonable subsistence allowance". When Winnie Mandela's banning order forced her to move to Brandfort and thus give up her Johannesburg job, she was given a monthly subsidy of R100,00, according to the Minister of Police.[24] Such subsidies are rare. In Achmed Dangor's opinion, the Government, by forcing people out of the country through simple starvation, is creating "militant enemies outside the borders" and can blame no one but itself.

4. POLITICAL DISABILITIES

Professional and political disabilities are sometimes linked. GN R2130 may deprive a banned person of his job as general secretary of a trade union. The same notice will stop him from being a member of any political organization, since such a body will certainly discuss "any form of State or principle or policy of State". He will also be unable to participate in the activities of any of the 35 organizations mentioned. In addition, some banning orders refer to specific organizations not included in the list in GN R2130 and forbid membership.

Under s 5 bis, various groups of people, including listed communists, are "incapable of being chosen and of sitting as members of either House of Parliament or of a provincial council or the Legislative Assembly of South West Africa". Like the prohibition on practising as a lawyer, this prohibition will apply to a banned person only if he also happens to be listed, or is convicted of certain offences under s 11, or is a

Communist. It is not a disability imposed by banning.

The most important political disability experienced by banned people was introduced in 1969, when the Electoral Consolidation Act was amended to provide that any person who was convicted of an offence under the Suppression of Communism Act, and sentenced to a term of imprisonment without option of a fine, would be deprived permanently of the right to vote. Loss of franchise automatically entails loss of the right to stand for election to Parliament or to a provincial council.

During the House of Assembly debate on the Electoral Laws Amendment Bill, Mrs Helen Suzman condemned the new provision as "very harsh", and having "no place in a democratic country".[25] She correctly foresaw the situation where a banned person, for failing to report to a police station, would be disfranchised, and described this as "scandalous".[26] Section 11 of the Internal Security Act lays down the minimum sentence for a failure to report in terms of s 10 quat: imprisonment for not less than one year. It is customary for the courts to suspend all but a few days of such a sentence. Because she once forgot to report, Helen Joseph was sentenced to twelve months' imprisonment, of which all but four days was suspended for three years. As a result of those few days in jail, Mrs Joseph has been disfranchised for life.

Since 1962 banned people have frequently been prohibited from attending any political gathering "that is to say, any gathering at which any form of State or any principle or policy of the Government of a State is propagated, defended, attacked, criticized or discussed". The scope covered by the term

"political gathering" is wide indeed. Strictly speaking, any social gathering may develop into a political gathering if the people present discuss the pro's and con's of the latest Budget outlined by the Minister of Finance.

5. OTHER DISABILITIES

These, then, are the major disabilities suffered by a banned person - the inability to enjoy a full social life because of a ban on attending gatherings, receiving visitors or communicating with people; disruption of work and political interests, as well as the petty annoyances of a requirement to report to the police, or be home punctually at 6.00 pm. Two other duties imposed on a banned person are the requirement of reporting any change of address or employment (s 11(d) bis) and of furnishing his name and address to a peace officer on request (s 11(d) ter). But there are other disabilities that are not set out in the notice received by the banned person. These are indirect, insidious and inevitable consequences of the "civil death"[27] thrust on him.

Surveillance

There is the surveillance that a banned person suffers. Different people experience it in different degrees. Perhaps it depends on who you are. Winnie Mandela cannot call on an acquaintance to ask about buying coal or chickens without being accused of attending a social gathering (S v Mandela 1979 (1) SA 284 (OPD). This intense surveillance - or is it harassment? -

of Mrs Mandela is an ongoing process. The Star newspaper of Wednesday 27 August 1980 reported that a furious Mrs Helen Suzman had been told to leave Mrs Mandela's home, although she had obtained a permit to visit Mrs Mandela. Other banned people are kept under minimal surveillance, and break their banning orders blatantly, frequently and with impunity.

Achmed Dangor says: "In the first two years the surveillance was quite severe... . The surveillance at home and the conditions under which we lived were unsettling." Dangor found that when there was unrest in the country, surveillance tightened. So, when there was a series of strikes in Durban in 1975, his house was raided. "I suppose they have a list of all the people who are political, who could be involved in fomenting unrest, as they call it."

Halton Cheadle comments: "You have police monitoring you all the time... . They used to arrive at five in the morning; they used to arrive at twelve at night." He adds: "They were watching all the time. So it made it very tense." And of 'phone taps: "I never spoke over the 'phone."

Several banned people are sure that their 'phones are tapped and suspect that their houses are bugged, but they shrug it off. Their policy is never to say anything that they would not be prepared to say anywhere. Mrs Joseph has been raided to see whether she had any visitors or any forbidden documents. When she was placed under house arrest in 1962, the police came to her home every night for the first three weeks.

Don Mattera has not only been banned for the last seven

years, he has also been detained for a short period. He has been charged three times with contravening his banning order, but never convicted. What must embitter Don Mattera are the frequent raids. There was one Easter weekend when the police came five times to his house. The Matteras have often experienced the full effect of a midnight raid, the banging on the door, the torches shining, the rough searching through the house, waking sleeping children.

When asked about surveillance, Lt-Col Mellet brushes the matter aside. The police, he says, are very humane about banned people, about things like reporting late to a police station. He stresses that banned people are not necessarily criminals, and are not treated as such. The object of a banning order, he explains, is simply to prevent the person from continuing with his former activities. (This "preventative rather than punitive" purpose of bannings was stressed by Kriek J in S v Cheadle at 459.) Should a person deliberately break his banning order, the police treat the matter as just another instance of breaking the law - like driving through a red robot (according to Lt-Col Mellet). Police brutality and victimization are fallacies. Mellet's view of the police as neutral and fair is not shared by banned people.

Victimization

Many banned people suffer from a victimization that can range from the annoying but petty, to the frightening and dangerous. Helen Joseph has frequently been the target. There have been hoax deliveries of tons of sand or crates of liquor, ordered by someone claiming to be "H Joseph". Then there are the obscene 'phone-callers, the threats of "I'm coming to get you" and "I'll kill you". Bullets have been fired at the house, and, as a result, Mrs Joseph now has a perspex bullet-proof window in her bedroom.

Don Mattera, too, has experienced many incidents, including shots being fired and telephoned threats to his family. Another victim of such intimidation is Achmed Dangor. He tells of a car sabotaged to explode when started: "The explosion was intended to burst into the car, but something went wrong and it burst out", so Dangor escaped unharmed. On another occasion, the brakes of a friend's car were tampered with so that they failed going down a steep hill. The driver had to ram the car into a wall to stop it. Shots have been fired at the Dangor's house, smashing windows. Does Dangor think that the police are behind this? He laughs, and then tells this story. At first Dangor thought the events were accidents, then one day, "A cop, actually a Black guy, accosted my wife in the building where she worked, but she recognized him because he had come to the house. He didn't think she'd recognize him, but when she said 'I know you', that's when he sort of disappeared."

Isolation

Banned people sometimes see themselves as political lepers. Not only do their notices directly prohibit them from mixing with certain people, or certain groups; there is also the loneliness that is not imposed by the Government, but which grows alongside the official isolation. Achmed Dangor : "I remember walking down the street and seeing people who used to invite me to come and organize poetry readings and address meetings, and to ask me to do all kinds of things. They'd see me, and they'd cross the street and walk on the other side. You begin to feel as if people were afraid of you." For the first six weeks after he was banned, Dangor saw only his immediate family, and (illegally) a few close friends, who were also banned. Don Mattera, formerly a leader in the Coloured community, must also feel this ostracism, this rejection, very deeply. People who were dependent on him for spiritual support have become afraid to turn to him.

It is as if people fear contamination if they come near a banned person, associate with him, or even stop to chat in the street. I felt something of this when I was doing research for this paper. Mrs Joseph agreed to talk to me, but was re-banned before I could do so. Suddenly I wondered whether her 'phone would be tapped when I called her, whether Security Police would see me entering her house. I was nervous just at the thought of my name being noted somewhere as someone who had visited Mrs Joseph.

That fear of associating with a banned person may be groundless and irrational: "I had to convince people that if I

break my banning order by being in your company, you're not going to be charged - I'm going to be charged. You almost had to convince your friends -- or the so-called friends - and associates that nothing would happen to them", says Achmed Dangor. Others, however, point out that something could "happen to them". There is always the possibility of a banned person's friend being asked to make a statement about an illegal gathering or forbidden visit; of being given the difficult choice of turning state witness in betrayal of a friend, or of going to jail for refusing. Helen Joseph refused to answer questions relating to alleged visits to Winnie Mandela, and was jailed as a result.

Psychological Effects

It is impossible for someone who is banned to retain absolute mental equilibrium in the face of all the restrictions, problems and loneliness that he faces. As Halton Cheadle says, "It's very depressing".

There is the anger you feel at being cut off from the world, at being prevented from pursuing your career. "What did anger me was the almost deliberate attempt, in the way they phrased the banning order, to prevent me from working at what I wanted to do ... and also the petty little acts of violence - that angered me", says Achmed Dangor. When the "acts of violence" become less petty, there is fear too, as a car's engine explodes, or a bullet smashes your window.

Some comments from Achmed Dangor: "You become a cynic"; "The banning order made me very sceptical about people - very

suspicious "; "I mistrust people". These feelings arise as friends and acquaintances reject you, the "leper". Or when close friends or family members turn out to be informers "literally informing the cops on what we are doing".

Being banned does affect one's character. Don Mattera emerges as a curious combination of an angry and bitter man who retains a deep love for his fellow human beings.

In spite of the anger, frustration, depression and fear, the banned people to whom I spoke have all retained a sense of humour and are not self-pitying. They talk of tricks used to fool the police: "We treated it as a game, trying to elude them. You know, like sending your friend or your brother out in your clothes and in your car - and they follow him in a different direction", says Dangor. Something that must have kept Helen Joseph from feeling self-pity is the thought of her closest friends serving life sentences on Robben Island (like Nelson Mandela) or exiled from their homes (like Winnie Mandela).

Family Life

All the disabilities and inconvenience suffered by a banned person are also experienced in varying degrees by his family. His emotional distress finds its echo in his wife and children. If he cannot find work, they suffer. The family, together with the banned person, are under police surveillance. The violence and victimization inflicted on him take their toll on his family.

Don Mattera is the father of seven children, ranging in age from eight to twenty-four. They have become extremely politically aware and radicalized because of their father's banning. Such a reaction seems fairly typical. Achmed Dangor talks about the children of a banned friend: "I knew the children when they were very small... . If you look at them now, they're totally different. Their attitude towards people and things generally is much more harsh and unforgiving. They weren't allowed to have a natural childhood like other children. Their father was different from other children's fathers. He had to watch whom he spoke to, where he went to, whom he went with, who came to his house. And all this obviously had an effect on his kids. They have become very militant. Extremely. They regard the father as a militant, but he's a moderate, a conservative in comparison to his eldest son." Even Dangor's six-year old daughter has absorbed some of her father's attitudes. She regards the police as people who harm and attack others. And what of Mrs Mandela's daughters, who cannot receive friends at home without having the matter turned into a court case? (Mandela v Prinsloo en 'n Ander.)

Financial difficulties also have a destructive effect on family life. The Dangors had been married for only one month when Achmed Dangor was banned and lost his job. He talks of the "unsettling effect" his banning and subsequent joblessness had on his wife. "We were without a home, without jobs, no money. For the first six months it was quite bad. We were poor for the first time in our lives."

III. EFFECTIVENESS

Is banning effective? Does the imposition of all these disabilities achieve anything? "We wouldn't do something if it were not proven to be effective", says Lt-Col Mellet. It seems that in general banned people agree.

Clearly a banning order cannot be 100% effective; surveillance cannot be extensive enough for that. All banned people break their orders at times, sometimes with impunity, sometimes not. "It's impossible not to break a banning order", says Achmed Dangor, who adds, "I broke my banning order within five minutes of receiving it." And: "There are one or two paranoic ones I know who stick scrupulously to the law but very few of them actually adhere to their banning order." Halton Cheadle agrees: "I broke my banning order almost every day of my life."

Although banning orders are contravened so regularly and frequently, the people interviewed for this project agreed that, overall, banning is effective. You may break your banning order by communicating with a banned friend, but you will not be able to break it on a larger scale, for example by having your books published here, or carrying on as a trade unionist or a Black Solidarity activist. Halton Cheadle says banning is "Absolutely effective. While you're banned you're finished. You get completely removed. You can't participate." To Achmed Dangor, a banning order is "very effective. It silenced us. For five years it silenced us." ; "You become a non-person... especially if what you did before was communicating with people -

a writer or a teacher or someone who worked with the public."

Banning is effective in another way. Some people become paranoic. They become their own jailers, afraid of the consequences of stepping out of line. This attitude can remain even after an order has expired or been lifted, as Achmed Dangor says: "They sort of ban themselves because of the implied threat of the ban being reimposed." Other banned people are indomitable, and repeated Government action is not enough to break them.

It is fear of consequences like banning that makes a Union like the National Union of Clothing Workers remain deliberately non-political. As the SAIRR says, "While an organization may never be declared unlawful, the repeated banning of its leaders can rob it of its effectiveness."[28] Lucy Mvubelo, General Secretary of the Union, explains: "We realized right from the onset when we started our union in 1953 that the Government was going to be very harsh on any trade union leaders who were also involved in politics." Mrs Mvubelo does not allow her private political beliefs to affect the working of the union. Bread and butter issues, and the survival of the union are of prime importance.

IV. CONCLUSION

Banning is effective and it is here to stay. If the trend of the last thirty years is continued in the future, banning orders will become increasingly stringent and comprehensive. When set beside the various detention without trial provisions in our security laws, banning may seem tame. Nevertheless, those who are banned suffer deeply and in may ways. Are such harsh measures valid or necessary?

The Government view is that South Africa is a land under siege by Communists and other like-minded people who threaten the security of the State and the maintenance of public order. "South Africa is the target of a concentrated effort to subvert it", says Lt-Col Leon Mellet. "This effort manifests itself in many ways." And so subversion must also be fought using many different and stringent methods.

All countries have some sort of security legislation and see the sense in combatting the adherents of violent upheaval, but peaceful protestors ought not be repressed. A strong and healthy government that has the support of the majority of its citizens will be able to withstand criticism and maintain law and order with a minimum of security measures. The present South African Government lacks such widespread support, and so must resort to frighteningly sweeping legislation and what is in effect a permanent state of emergency. But it can be argued that a state which can only survive because of such laws has no right to survive.

The Government argument that unrest in South Africa is caused by outsiders, by Communist "agitators", is rejected by the opposing camp. Mrs Mvubelo says: "There are no agitators. Who does not know that if I leave my house going to work perhaps I'll be arrested because of the Reference Book? Who is not aware that when I get to the train there will be four or five empty coaches, and just because they are white coaches I cannot enter them? I must go and cram in that already packed coach just because I'm Black. Who's not aware of that?" The people have grievances, and do not need an outsider to tell them so. This is an unjust society, as anyone living here knows.

Perhaps the distinction between pro- and anti- banning views lies in one's attitude to the status quo in South Africa. Government supporters, men like Lt-Col Mellet, believe that the present system is healthy, deserving protection and preservation. If one must deprive the individual of his rights in order to maintain order, so be it. Former Minister of Justice, Mr J T Kruger, while merely MP for Prinshof, summed up this view: "The security of the State is the highest law; and the interests of the individual must bow to the security of the State."[29)]

In total opposition to the above view stands a large group of people, for whom South African society is diseased. Bishop Desmond Tutu states that as long as we have unjust laws and oppression, "this kind of South Africa is indefensible". To people holding these views, measures such as banning orders are equally indefensible, stemming as they do from laws that "are really lawless".[30)]

APPENDIX

(1) RELEVANT SECTIONS OF THE INTERNAL SECURITY ACT

1. Definitions.—In this Act, unless the context otherwise indicates—

. . . .

"**communism**" means the doctrine of Marxian socialism as expounded by Lenin or Trotsky, the Third Communist International (the Comintern) or the Communist Information Bureau (the Cominform) or any related form of that doctrine expounded or advocated in the Republic for the promotion of the fundamental principles of that doctrine and includes, in particular, any doctrine or scheme—

(*a*) which aims at the establishment of a despotic system of government based on the dictatorship of the proletariat under which one political organization only is recognized and all other political organizations are suppressed or eliminated; or

(*b*) which aims at bringing about any political, industrial, social or economic change within the Republic by the promotion of disturbance or disorder, by unlawful acts or omissions or by the threat of such acts or omissions or by means which include the promotion of disturbance or disorder, or such acts or omissions or threat; or

(*c*) which aims at bringing about any political, industrial, social or economic change within the Republic in accordance with the directions or under the guidance of or in co-operation with any foreign government or any foreign or international institution whose purpose or one of whose purposes (professed or otherwise) is to promote the establishment within the Republic of any political, industrial, social or economic system identical with or similar to any system in operation in any country which has adopted a system of government such as is described in paragraph (*a*); or

(*d*) which aims at the encouragement of feelings of hostility between the European and non-European races of the Republic the consequences of which are calculated to further the achievement of any object referred to in paragraph (*a*) or (*b*);

"**communist**" means a person who professes or has at any time before or after the commencement of this Act professed to be a communist or who, after having been given a reasonable opportunity of making such representations as he may consider necessary, is deemed by the State President or, in the case of an inhabitant of the territory of South-West Africa, by the Administrator of the said territory, to be a communist on the ground that he is advocating, advising, defending or encouraging or has at any time before or after the commencement of this Act, whether within or outside the Republic, advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object, or that he has at any time before or after the commencement of this Act been a member or active supporter of any organization outside the Republic which professed, by its name or otherwise, to be an organization for propagating the principles or promoting the spread of communism, or whose purpose or one of whose purposes was to propagate the principles or promote the spread of communism, or which engaged in activities which were calculated to further the achievement of any of the objects of communism;

[Definition of "communist" substituted by s. 1 (*a*) of Act No. 50 of 1951.]

. . . .

"**gathering**" means any gathering, concourse, or procession in, through or along any place, of any number of persons having except in the case of any gathering contemplated in sub-paragraph (ii) of paragraph (*e*) of sub-section (1) of section *five* or paragraph (*b*) of sub-section (1) or (3) of section *nine*, a common purpose, whether such purpose be lawful or unlawful;

[Definition of "gathering" amended by s. 1 of Act No. 76 of 1962.]

. . . .

5. Restrictions which Minister may impose on Communists or office-bearers, officers, members or active supporters of unlawful organizations.—(1) The Minister may by notice in writing addressed and delivered or tendered to the person concerned require any person whose name appears on any list in the custody of the officer referred to in section *eight*, or who has been convicted of an offence under section *eleven* or is a communist—

(*a*) to comply, while he is an office-bearer, officer or member of any organization specified in the notice, or a member of any public body so specified or while he holds any public office so specified, with such conditions as may be prescribed therein;

(*b*) to resign as an office-bearer, officer or member of an organization specified in the notice, within a period so specified, not again to become an office-bearer, officer or member of that organization and not to take part in its activities;

(*c*) not to become an office-bearer, officer or member and not to take any part in the activities of any organization specified in the notice or of any kind of organization so specified;

(*d*) not to become a member of any public body specified in the notice or to hold any public office so specified or, if he is such a member or holds such an office, to resign, within a period so specified, as such member or from such office and not again to become such a member or hold such office;

[Para. (*d*) substituted by s. 4 (*a*) of Act No. 50 of 1951.]

(*e*) not to attend—

(i) any gathering; or

(ii) any particular gathering or any gathering of a particular nature, class or kind,

at any place or in any area during any period or on any day or during specified times or periods within any period, except in such cases as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time expressly authorize.

[Sub-s. (1) amended by s. 3 (*a*) of Act No. 15 of 1954. Para. (*e*) added by s. 4 (*a*) of Act No. 50 of 1951, substituted by s. 3 (*b*) of Act No. 15 of 1954 and s. 3 of Act No. 76 of 1962.]

(1)*bis* (*a*) If in the case of a senator, a committee of the Senate or, in the case of a member of the House of Assembly or a provincial council or the Legislative Assembly of the territory of South-West Africa, a committee of the House of Assembly reports to the Senate or the House of Assembly, as the case may be—

(i) that the name of a senator or, as the case may be, of such a member appears on a list in the custody of the officer referred to in section *eight* and that there are no circumstances which would justify the removal of his name from such list; or

(ii) that a senator or such a member has been convicted of an offence under section *eleven* or is a communist; or

(iii) that a senator or such a member is or was at any time before or after the commencement of this Act an office-bearer, officer, member or active supporter of the Communist Party of South Africa, whether or not his name appears on any such list as aforesaid, or that he has at any time before or after the commencement of this Act professed to be a communist or advocated, advised, defended or encouraged the achievement of any of the objects of communism or any act or omission which was calculated to further the achievement of any such object,

the Minister may if the said report is approved by the Senate or, as the case may be, the House of Assembly and the Senate or the House of Assembly, as the case may be, does not recommend that no action be taken, notify that senator or that member, as the case may be, and also the President of the Senate or, as the case may be, the Speaker of the House of Assembly or the Chairman of the provincial council concerned or the Legislative Assembly of the said territory, in writing that the said senator or member shall as from a date specified in the notice, cease to be a senator or such a member, and as from that date he shall for all purposes be deemed to be incapable of sitting as a senator or such a member in terms of section *fifty-three* of the South Africa Act, 1909, or in terms of the said section as applied to members of the provincial councils by section *seventy-two* of the said Act, or in terms of section *seventeen* of the South-West Africa Constitution Act, 1925 (Act No. 42 of 1925), and his seat shall become vacant.

[Sub-s. (1)*bis* inserted by s. 4 (*b*) of Act No. 50 of 1951.]

(*b*) .....

[Para. (*b*) deleted by s. 3 (*c*) of Act No. 15 of 1954.]

(2) The Minister may at any time in like manner withdraw or vary any notice under sub-section (1).

....

5bis. **Certain persons incapable of being chosen and of sitting as members of either House of Parliament or of a provincial council or the Legislative Assembly of South-West Africa.**—(1) No person in respect of whom a notice has been issued in terms of paragraph (*a*) of sub-section (1)*bis* of section *five* and no person whose name appears on any list in the custody of the officer referred to in section *eight* or who has been convicted of an offence under section *eleven* or is a communist, whether he has been nominated for election before or after the date of commencement of the Riotous Assemblies and Suppression of Communism Amendment Act, 1954, shall be capable of being chosen and, if he is chosen, of sitting as a senator or as a member of the House of Assembly or of a provincial council or the Legislative Assembly of the territory of South-West Africa unless he has, prior to his election, obtained the written approval of the Minister or the leave of the Senate, in the case of a person seeking election as a senator, or of the House of Assembly in any other case.

(2) If any person who is incapable of being chosen in terms of sub-section (1) is chosen as a senator or such a member, the Minister shall notify that senator or that member, as the case may be, and also the President of the Senate or, as the case may be, the Speaker of the House of Assembly or the Chairman of the provincial council concerned or the Legislative Assembly of the territory of South-West Africa in writing that the said senator or member was incapable in terms of sub-section (1) of being chosen as a senator or such a member and thereupon his seat shall be deemed vacant.

[S. *5bis* inserted by s. 4 of Act No. 15 of 1954.]

5ter. **Certain persons not to become office-bearers, officers or members of certain organizations without consent of Minister or magistrate.**—(1) The Minister may by notice in the *Gazette* prohibit all persons whose names appear on any list in the custody of the officer referred to in section 8 or who, at any time before or after any organization has under section 2 (2) been declared to be an unlawful organization, were or are office-bearers, officers or members of that organization or in rsepect of whom any prohibition under this Act by way of notices addressed and delivered or tendered to them is in force, from—

(*a*) being or becoming office-bearers, officers or members,

(*b*) making or receiving any contribution of any kind for the direct or indirect benefit, or

(*c*) participating in any way in any activity,

of any particular organization or any organization of a nature, class or kind specified in such notice, except with the written consent of the Minister or a magistrate acting in pursuance of his general or special instructions: Provided that the Minister shall not issue any such notice in relation to any employers' organization or trade union registered under the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), except after consultation with the Minister of Labour.

[Sub-s. (1) substituted by s. 1 of Act No. 24 of 1967 and amended by s. 1 of Act No. 2 of 1972.]

(2) The Minister may at any time by like notice withdraw or vary any notice under sub-section (1).

[S. *5ter* inserted by s. 4 of Act No. 76 of 1962.]

5quat. **Persons listed or convicted under this Act disqualified from practising as advocates, attorneys, notaries or conveyancers.**—(1) Notwithstanding anything to the contrary in any law contained—

(*a*) no person shall be admitted by the court of any division of the Supreme Court of South Africa to practise as an advocate, attorney, notary or conveyancer, unless such person satisfies such court that his name does not appear on any list in the custody of the officer referred to in section 8 and that he has not before or after the commencement of this section been convicted of an offence under section 11 (*a*), (*b*), (*b*)*bis*, (*b*)*ter* or (*c*);

(*b*) the court of any division of the Supreme Court of South Africa shall, on an application made by the Secretary for Justice, order that the name of any person be struck off the roll or list of advocates, attorneys, notaries or conveyancers to be kept in terms of the relevant law relating to the admission of advocates, attorneys, notaries or conveyancers, if the court is satisfied that such person's name appears on any list referred to in paragraph (*a*) or that he has before or after the commencement of this section been convicted of an offence referred to in paragraph (*a*).

(2) Notwithstanding the provisions of paragraph (*a*) of subsection (1), the court may admit any person convicted of an offence referred to in that paragraph if he produces a certificate signed by the Minister to the effect that the Minister has no objection to the admission of such person on account of his having been so convicted.

[S. *5quat* inserted by s. 2 of Act No. 24 of 1967.]

9. Prohibition of certain gatherings.—(1) Whenever the Minister is satisfied that any person engages in activities which are furthering or are calculated to further the achievement of any of the objects of communism or which endanger or are calculated to endanger the security of the State or the maintenance of public order, he may by notice under his hand addressed and delivered or tendered to that person, prohibit him from attending, except in such cases as may be specified in the notice or as the Minister or magistrate acting in pursuance of his general or special instructions may at any time expressly authorize—

(*a*) any gathering; or

(*b*) any particular gathering or any gathering of a particular nature, class or kind,

at any place or in any area during any period or on any day or during specified times or periods within any period.

[Sub-s. (1) amended by s. 6 (*a*) and (*b*) of Act No. 15 of 1954, substituted by s. 7 (*a*) of Act No. 76 of 1962 and amended by s. 3 of Act No. 79 of 1976.]

(2) If any person to whom a notice has been delivered or tendered under sub-section (1) requests the Minister in writing to furnish him with the reasons for such notice and with a statement of the information which induced the Minister to issue such notice, the Minister shall furnish such person with a statement in writing setting forth his reasons for such notice and so much of the information which induced the Minister to issue the notice as can, in his opinion, be disclosed without detriment to public policy.

[Sub-s. (2) added by s. 6 (*c*) of Act No. 15 of 1954.]

(3) The Minister may in the manner provided in sub-section (2) of section two of the Riotous Assemblies Act, 1956 (Act No. 17 of 1956), prohibit the assembly, except in such cases as he may specify when imposing the prohibition or as may thereafter be expressly authorized by him or a magistrate acting in pursuance of his general or special instructions—

(*a*) of any gathering; or

(*b*) of any particular gathering or any gathering of a particular nature, class or kind,

at any place or in any area during any period or on any day or during specified times or periods within any period, if he deems it to be necessary in order to combat the achievement of any of the objects of communism.

[Sub-s. (3) added by s. 7 (*b*) of Act No. 76 of 1962.]

(4) The Minister may, in the manner in which any prohibition under this section was imposed, at any time withdraw or vary such prohibition.

[Sub-s. (4) added by s. 7 (*b*) of Act No. 76 of 1962.]

10. Certain persons may be prohibited from being within defined areas.—(1) (*a*) If the name of any person appears on any list in the custody of the officer referred to in section *eight* or the Minister is satisfied that any person—

(i) advocates, advises, defends or encourages the achievement of any of the objects of communism or any act or omission which is calculated to further the achievement of any such object; or

(ii) is likely to advocate, advise, defend or encourage the achievement of any such object or any such act or omission; or

(iii) engages in activities which are furthering or may further the achievement of any such object; or

(iv) engages in activities which endanger or are calculated to endanger the security of the State or the maintenance of public order,

[Sub-para. (iv) inserted by s. 4 (*b*) of Act No. 79 of 1976.]

the Minister may by notice under his hand addressed and delivered or tendered to any such person and subject to such exceptions as may be specified in the notice or as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time authorize in writing, prohibit him, during a period so specified, from being within or absenting himself from any place or area mentioned in such notice or, while the prohibition is in force, communicating with any person or receiving any visitor or performing any act so specified: Provided that no such prohibition shall debar any person from communicating with or receiving as a visitor any advocate or attorney managing his affairs whose name does not appear on any list in the custody of the officer referred to in section *eight* and in respect of whom no prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force.

(*b*) The Minister may at any time by like notice withdraw or vary any such notice.

(*c*) While any notice issued under paragraph (*a*) or paragraph (*a*) read with paragraph (*a*)*bis* is in force, the period of the prohibition in question specified in such notice may be extended by a notice under the hand of the Minister addressed and delivered or tendered to the person concerned.

[Sub-s. (1) substituted by s. 8 (*a*) of Act No. 76 of 1962. Para (*c*) inserted by s. 14 (1) (*b*) of Act No. 80 of 1964.]

(1)*bis* If any person to whom a notice has been delivered or tendered under sub-section (1) requests the Minister in writing to furnish him with the reasons for such notice, and with a statement of the information which induced the Minister to issue such notice, the Minister shall furnish such person with a statement in writing setting forth his reasons for such notice and so much of the information which induced the Minister to issue the notice as can, in his opinion, be disclosed without detriment to public policy.

[Sub-s. (1)*bis* inserted by s. 7 of Act No. 15 of 1954.]

(1)*ter* Without prejudice to the provisions of sub-section (1) the Minister may, before deciding to impose any prohibition on any person under the said sub-section, require any magistrate to administer to such person a warning to refrain from engaging in any activities calculated to further the achievement of any of the objects of communism.

[Sub-s. (1)*ter* inserted by s. 8 (*b*) of Act No. 76 of 1962.]

(2) Whenever any person who has received a notice in terms of sub-section (1) is necessarily put to any expense in order to comply with such notice, the Minister may in his discretion cause such expense, or any part thereof, to be defrayed out of moneys appropriated by Parliament for the purpose and may further in his discretion, cause to be paid out of such moneys to such person a reasonable subsistence allowance during any period whilst such notice applies to him.

(3) Any person who has by notice under this section been prohibited from being within or absenting himself from any place or area may, if, at the time the notice is delivered or tendered to him or at any time thereafter, he is at or in or, as the case may be, elsewhere than at or in that place or area, be arrested without warrant by any member of the South African Police and be removed from or to such place or area by that member or any other such member and may pending his removal be detained in custody.

[Sub-s. (3) amended by s. 8 (*c*) of Act No. 76 of 1962 and substituted by s. 4 (*b*) of Act No. 37 of 1963.]

(4) Any person who has by notice under this section been prohibited from absenting himself from any place or area, shall be deemed to have absented himself from such place or area, if, at any time after the notice has been delivered or tendered to him, he is elsewhere than at such place or in such area.

[Sub-s. (4) added by s. 4 (*b*) of Act No. 37 of 1963.] . . . .

10*ter*. Publication in the Gazette of particulars of prohibition of certain persons from attending gatherings.—The Minister may cause particulars of any notice issued under paragraph (*e*) of sub-section (1) of section *five* or sub-section (1) of section *nine*, to be published in the *Gazette*.

[S. 10*ter* inserted by s. 9 of Act No. 76 of 1962.]

10*quat*. Minister may order certain persons to report periodically at police station.—(1) The Minister may at any time by notice under his hand addressed and delivered or tendered to any person whose name appears on any list in the custody of the officer referred to in section 8 or in respect of whom any prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force, order such person to report, subject to such exceptions as the Minister or a magistrate acting in pursuance of his general or special instructions may at any time authorize in writing, to the officer in charge of such police station and at such times and during such period as may be specified in the notice concerned.

[Sub-s. (1) substituted by s. 3 of Act No. 2 of 1972.]

(2) The Minister may at any time in like manner withdraw or vary any notice issued under sub-section (1).

[S. 10*quat* inserted by s. 9 of Act No. 76 of 1962.]

11. Penalties.—Any person who—

(*a*) performs any act which is calculated to further the achievement of any of the objects of communism; . . . .

(*d*)*bis* while his name appears on any list in the custody of the officer referred to in section *eight* or while any prohibition under this Act by way of a notice addressed and delivered or tendered to him is in force, changes the place of his residence or employment and fails forthwith to give notice thereof in person to an officer in charge of a police station;

[Para. (*d*)*bis* inserted by s. 10 (1) (*a*) of Act No. 76 of 1962.]

(*d*)*ter* while his name so appears or while any such prohibition is in force, when called upon by a peace officer as defined in the Criminal Procedure Act, 1955 (Act No. 56 of 1955), to furnish him with his full name and address, fails to do so or furnishes a false or incorrect name and address;

[Para. (*d*)*ter* inserted by s. 10 (1) (*a*) of Act No. 76 of 1962.]

(*d*)*quat* fails to comply with a notice addressed and delivered or tendered to him in terms of sub-section (1) of section *ten quat*;

[Para. (*d*)*quat* inserted by s. 10 (1) (*a*) of Act No. 76 of 1962.]

(*f*) fails to comply with any requirement of a notice under section *five*;

(*f*)*bis* while being incapable in terms of section *five bis* of being chosen as a senator or as a member of the House of Assembly or of a provincial council or the Legislative Assembly of South-West Africa, accepts nomination for election as a senator or as such a member;

[Para. (*f*)*bis* inserted by s. 8 (*a*) of Act No. 15 of 1954.]

(*f*)*ter* in contravention of a notice under section *five ter* is or becomes an office-bearer, officer or member of any organization;

[Para. (*f*)*ter* inserted by s. 10 (1) (*c*) of Act No. 76 of 1962.] . . . . .

(*g*)*bis* without the consent of the Minister or except for the purposes of any proceedings in any court of law, records or reproduces by mechanical or other means or prints, publishes or disseminates any speech, utterance, writing or statement or any extract from or recording or reproduction of any speech, utterance, writing or statement made or produced or purporting to have been made or produced anywhere at any time by any person in respect of whom the provisions of this paragraph are applicable by virtue of a notice issued under section 10*quin*, or whose name appears on any list in the custody of the officer referred to in section 8, or in respect of whom a prohibition to attend any gathering is in force under section 5 or 9;

[Para. (*g*)*bis* inserted by s. 8 (*b*) of Act No. 15 of 1954 and substituted by s. 10 (1) (*e*) of Act No. 76 of 1962, by s. 5 (*b*) of Act No. 97 of 1965 and by s. 13 of Act No. 57 of 1975.]

(*h*) in contravention of a notice delivered or tendered to him in terms of section *nine* attends any gathering;

(*i*) contravenes or fails to comply with any notice delivered or tendered to him in terms of sub-section (1) of section *ten*;

[Para. (*i*) amended by s. 10 (1) (*f*) of Act No. 76 of 1962.]

shall be guilty of an offence, and liable—

(i) in the case of an offence referred to in paragraph (*a*), (*b*), (*c*), (*d*), (*d*)*bis*, (*d*)*ter* or (*d*)*quat* to imprisonment for a period of not less than one year and not exceeding ten years; . . . .

(ii) in the case of an offence referred to in paragraph (*e*), (*e*)*bis*, (*f*), (*f*)*bis*, (*f*)*ter*, (*g*), (*g*)*bis*, (*h*) or (*i*) to imprisonment for a period not exceeding three years; and

[Sub-para. (ii) amended by s. 8 (*c*) of Act No. 15 of 1954 and by s. 10 (1) (*h*) of Act No. 76 of 1962.]

A P P E N D I X

(2) EXAMPLE OF A BANNING ORDER

TO: BEAUTY NOSIDIMA PITYANA
(I.N. 3679091 V/F)
44 SANDLA STREET
NEW BRIGHTON
PORT ELIZABETH

NOTICE IN TERMS OF SECTION 9(1) OF THE INTERNAL SECURITY ACT, 1950 (ACT 44 OF 1950)

WHEREAS I, JAMES THOMAS KRUGER, Minister of Justice, am satisfied that you engage in activities which endanger or are calculated to endanger the maintenance of public order, I hereby, in terms of section 9(1) of the Internal Security Act, 1950, prohibit you for a period commencing on the date on which this notice is delivered or tendered to you and expiring on 31 March 1982, from attending within the Republic of South Africa or the territory of South-West Africa -

(1) any gathering contemplated in paragraph (a) of the said section 9(1); or

(2) any gathering contemplated in paragraph (b) of the said section 9(1), of the nature, class or kind set out below:

(a) Any social gathering, that is to say, any gathering at which the persons present also have social intercourse with one another;

(b) any political gathering, that is to say, any gathering at which any form of State or any principle or policy of the Government of a State is propagated, defended, attacked, criticised or discussed;

(c) any gathering of pupils or students assembled for the purpose of being instructed, trained or addressed by you.

Given under my hand at CAPE TOWN this 16th day of MARCH 1977.

(Signed)

MINISTER OF JUSTICE

Note: The Magistrate, Port Elizabeth, has in terms of section 9(1) of the abovementioned Act been empowered to authorize exceptions to the prohibitions contained in this notice.

TO: BEAUTY NOSIDIMA PITYANA
(I.N. 3679091 V/F)
44 SANDLA STREET
NEW BRIGHTON
PORT ELIZABETH

NOTICE IN TERMS OF SECTION 10(1)(a) OF THE INTERNAL SECURITY ACT, 1950 (ACT 44 OF 1950)

WHEREAS, I, JAMES THOMAS KRUGER, Minister of Justice, am satisfied that you engage in activities which endanger or are calculated to endanger the maintenance of public order, I hereby, in terms of section 10(1)(c) of the Internal Security Act, 1950, prohibit you for a period commencing on the date on which this notice is delivered or tendered to you and expiring on 31 March 1982, from

(1) absenting yourself from -

(a) the residential premises situate at 44 Sandla Street, New Brighton, Port Elizabeth, at any time except -

(i) between 06h00 and 18h00 on any day not being a Saturday, Sunday or public holiday;

(ii) between 08h00 and 11h30 on any Sunday for the sole purpose of attending a service in the St Stephen's Church, New Brighton, Port Elizabeth;

(b) the magisterial district of Port Elizabeth;

(2) being within -

(a) any Bantu area, that is to say -

(i) any Scheduled Bantu Area as defined in the Bantu Land Act, 1913 (Act 27 of 1913);

(ii) any land of which the South African Bantu Trust referred to in section 4 of the Bantu Trust and Land Act, 1936 (Act 18 of 1936), is the registered owner or any land held in trust for a Bantu Tribal Community in terms of the said Bantu Trust and Land Act, 1936;

(iii) any location, Bantu hostel or Bantu village defined and set apart under the Bantu (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945);

(iv) any area approved for the residence of Bantu in terms of section 9(2)(h) of the Bantu (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945);

(v) any Bantu Township established under the Regulations for the Administration and Control of Townships in Bantu Areas, promulgated in Proclamation R293 of 16 November 1962;

except New Brighton;

(b) any Bantu compound;

(c) any area set apart under any law for the occupation of Coloured or Asiatic persons;

(d) the premises of any factory as defined in the Factories, Machinery and Building Work Act, 1941 (Act 22 of 1941);

(e) any place which constitutes the premises on which any publication as defined in the Internal Security Act, 1950, is prepared, compiled, printed or published;

(f) any place which constitutes the premises of any of the following organizations, and any place which constitutes premises on which the premises of any such organization are situate:

(i) any organization contemplated in Government Notice R2130 of 28 December 1962, as amended by Government Notice R1947 of 27 November 1964;

(ii) the South African Students' Organisation;

(iii) the Black People's Convention;

(iv) the Isithlobo Youth Group;

(v) the South African Institute of Race Relations;

(g) any place or area which constitutes the premises on which any public or private university, university college, college, school or other educational institution is situate;

(h) any place or area which constitutes the premises of any superior or inferior court as defined in the Criminal Procedure Act, 1955 (Act 56 of 1955), except for the purpose of -

(i) applying to a magistrate for an exception to any prohibition in force against you under the Internal Security Act, 1950;

(ii) attending any criminal proceedings in which you are required to appear as an accused or a witness;

(iii) attending any civil proceedings in which you are a plaintiff, petitioner, applicant,

defendant, respondent or other party or in which you are required to appear as a witness;

(i) any harbour as defined in section 1 of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act 70 of 1957);

(3) performing any of the following acts -

(a) preparing, compiling, printing, publishing, disseminating or transmitting in any manner whatsoever any publication as defined in the Internal Security Act, 1950;

(b) participating or assisting in any manner whatsoever in the preparation, compilation, printing, publication , dissemination or transmission of any publication as so defined;

(c) contributing, preparing, compiling or transmitting in any manner whatsoever any matter for publication in any publication as so defined;

(d) assisting in any manner whatsoever in the preparation, compilation or transmission of any matter for publication in any publication as so defined;

(e) (i) preparing, compiling, printing, publishing, disseminating or transmitting in any manner whatsoever any document (which shall include any book, pamphlet, record, list, placard, poster, drawing, photograph or picture which is not a publication within the meaning of paragraph 3(a) above); or

(ii) participating or assisting in any manner whatsoever in the preparation, compilation, printing, publication, dissemination or transmission of any such document,

in which, inter alia -

(aa) any form of State or any principle or policy of Government of a State is propagated, defended, attacked, criticised, discussed or referred to;

(bb) any matter is contained concerning any body, organization, group or association of persons, institution, society or movement which has been declared an unlawful organization by or under the Internal Security Act 1950, or the Unlawful Organizations Act, 1960 (Act 34 of 1960), or any organization contemplated in Government Notice R2130 of 28 December 1962, as amended by Government Notice R1947 of 27 November 1964; or

(cc) any matter is contained which is likely to engender feelings of hostility between the White and the non-White inhabitants of the Republic of South Africa;

(f) giving any educational instruction in any manner or form to any person other than a person of whom you are a parent;

(g) taking part in any manner whatsoever in the activities or affairs of -

(i) any organization contemplated in Government Notice R2130 of 28 December 1962, as amended by Government Notice R1947 of 27 November 1964;

(ii) the South African Students' Organisation;

(iii) the Black People's Convention;

(iv) the Isithlobo Youth Group;

(v) the South African Institute of Race Relations;

(4) communicating in any manner whatsoever with any person whose name appears on any list in the custody of the officer referred to in section 8 of the Internal Security Act 1950 or in respect of whom any prohibition under the Internal Security Act 1950 or the Riotous Assemblies Act 1956 (Act 17 of 1956), is in force, except your husband Nyameko Barney Pityana;

(5) receiving at the said residential premises any visitor other than -

(a) a medical practitioner for medical attendance on you or members of your household, if the name of such medical practitioner does not appear on any list in the custody of the officer referred to in section 8 of the Internal Security Act, 1950, and no prohibition under the Internal Security Act, 1950, or the Riotous Assemblies Act, 1956, is in force in respect of such medical practitioner;

(b) your mother-in-law Mrs Ruth Pityana.

Given under my hand at CAPE TOWN this 16th day of MARCH 1977.

(Signed)
MINISTER OF JUSTICE

NOTE: The Magistrate, Port Elizabeth, has in terms of section 10(1)(a) of Act 44 of 1950 been empowered to authorize exceptions to the prohibitions contained in this notice.

TO: BEAUTY NOSIDIMA PITYANA
(I.N. 3679091 V/F)
44 SANDLA STREET
NEW BRIGHTON, PORT ELIZABETH

NOTICE IN TERMS OF SECTION 10 QUAT (1) OF THE INTERNAL SECURITY ACT, 1950 (Act 44 OF 1950)

WHEREAS there is in force against you a prohibition under section 9(1) of the Internal Security Act, 1950, by way of a notice addressed and delivered or tendered to you, I, JAMES THOMAS KRUGER, Minister of Justice, hereby, in terms of section 10 quat (1) of the said Act, order you for a period commencing on the date on which this notice is delivered or tendered to you and expiring on 31 March 1982 , to report to the officer in charge of the New Brighton Police Station, Port Elizabeth, on every MONDAY between 06h00 and 18h00: Provided that if any such MONDAY falls on a public holiday, you shall report on the following day not being a public holiday.

Given under my hand at CAPE TOWN this 16th day of MARCH 1977.

(Signed)
MINISTER OF JUSTICE

NOTE: The Magistrate, Port Elizabeth, has in terms of section 10 quat (1) of the abovementioned Act been empowered to authorize exceptions to this notice.

FOOTNOTES

1. For example, see the Argus front-page article on Tuesday 30 December 1980 : "Act on Banning - Plea to UN".

2. Union House of Assembly Debates, vol 73, col 8909 (14 June 1950).

3. House of Assembly Debates, vol 62, col 6306 (7 May 1976).

4. Union House of Assembly Debates, vol 73, col 8933 (14 June 1950).

5. House of Assembly Debates, vol 4, col 6088 (21 May 1962).

6. House of Assembly Debates, vol 19, col 611 (3 February 1967).

7. House of Assembly Debates, vol 62, col 6452 (11 May 1976).

8. Senate Debates, 23 February 1968, vol 525.

9. Union House of Assembly Debates, vol 84, cols 2207-8 (17 March 1954).

10. John Dugard, Human Rights and the South African Legal Order (Princeton, New Jersey: Princeton UP, 1978) p 139.

11. Senate Debates, 23 February 1968, col 526.

12. Anthony S Mathews, Law Order and Liberty in South Africa (Cape Town: Juta, 1971) p 65.

13. House of Asembly Debates, vol 32, col 1013 (17 February 1971).

14. Questions and Replies 1980, col 817.

15. Questions and Replies 1980, col 817.

16. Star 24 January 1981, p 7.

17. Sean Moroney and Linda Ensor, The Silenced. Bannings in South Africa (Johannesburg: SAIRR, 1979) p 1.

18. The Silenced, p 13.

19. The Silenced, p 5.

19(a) Sobukwe and Another v Minister of Justice 1972 (1) SA 693 (AD).

20. 1964 Annual Survey 22-28.

21. House of Assembly Debates, vol 4, col 6068 (21 May 1962)

22. The Silenced, p 24.

23. The Silenced, p 33.

24. The Silenced, p 30.

25. House of Assembly Debates, vol 27, col 7745 (11 June 1969).

26. House of Assembly Debates, vol 27, col 7749 (11 June 1969).

27. House of Assembly Debates, vol 4, col 6086 (21 May 1962).

28. The Silenced, p 1.

29. House of Assembly Debates, vol 19, col 621 (3 February 1967).

30. Bishop Tutu.

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Mathews, Anthony S. Law, Order and Liberty in South Africa Cape Town : Juta and Co Ltd, 1971.

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Dudley v Minister of Justice 1963 (2) SA 464 (AD).

Garment Workers' Union and Sachs v Minister of Justice 1952 (4) SA 384 (AD).

Kloppenburg v Minister of Justice 1964 (4) SA 31 (NPD).

Mandela v Prinsloo en 'n Ander 1977 (4) SA 782 (OPD).

Minister of Justice v Hodgson 1963 (4) SA 535 (TPD).

Minister of Justice v Alexander 1975 (4) SA 530 (AD).

R v Kahn 1955 (3) SA 177 (AD).

R v Mpeta 1956 (4) SA 257 (CPD).

R v Ngwevela 1954 (1) SA 123 (AD).

R v Sachs 1953 (1) SA 392 (AD).

Sobukwe and Another v Minister of Justice 1972 (1) SA 693 (AD).

S v Arenstein 1964 (1) SA 361 (AD).

S v Arenstein 1964 (4) SA 697 (NPD).

S v Beard 1965 (4) SA 543 (ECD).

S v Bennie 1964 (4) SA 192 (ECD).

S v Carneson 1967 (4) SA 301 (CPD).

S v Cheadle 1975 (3) SA 457 (NPD).

S v Hjul 1964 (2) SA 635 (CPD).

S v Jassat 1965 (3) SA 423 (AD).

S v Joseph 1964 (1) SA 659 (TPD).

S v Keegan 1976 (1) SA 30 (CPD).

S v Mandela 1968 (4) SA 123 (CPD).

S v Mandela 1972 (3) SA 231 (AD).

S v Mandela and Another 1974 (4) SA 878 (AD).

S v Mandela 1979 (1) SA 284 (OPD).

S v Meer 1981 (1) SA 739 (N).

S v Moonsamy 1963 (4) SA 334 (NPD).

S v Naicker 1967 (4) SA 214 (NPD).

S v Nathie 1966 (2) SA 291 (AD).

S v Ntwasa 1974 (3) SA 671 (NCD).

S v Pityana 1976 (4) SA 823 (ECD).

S v Qumbella 1966 (4) SA 356 (AD).

S v Qumbella 1967 (4) SA 577 (AD).

S v Sader 1968 (2) SA 716 (NPD).

S v Saliwa 1969 (1) SA 640 (ECD)

S v Tobias 1967 (2) SA 165 (CPD).

S v Weinberg 1979 (3) SA 89 (AD).

S v Wood 1976 (1) SA 703 (AD).

S v Ziggolo 1980 (1) SA 49 (AD).